

# A Dangerous Impasse: Rwandan Refugees in Uganda



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## **Background to the Paper**

This paper is the result of a co-ordinated research and writing effort between staff from the Refugee Law Project (RLP) and the International Refugee Rights Initiative (IRRI).

The paper was written by Lucy Hovil of IRRI with input from Moses Chrispus Okello of RLP and Deirdre Clancy of IRRI, particularly on the legal dimensions of the research. The field research was carried out by Joseph Okumu and Maloe Klaassen. Dismas Nkunda and Olivia Bueno of IRRI. Bill O'Neill of the Social Science Research Council (SSRC) reviewed a draft of the report and made helpful comments. We would like to express our gratitude to the National Council for Science and Technology for permission to conduct the research, and to all those who participated in the study.

### **Citizenship and Displacement in the Great Lakes Region Working Paper Series**

The paper is the fourth in a series of working papers that form part of a collaborative project between the International Refugee Rights Initiative, the Social Science Research Council and civil society and academic partners in the Great Lakes region. The SSRC is pleased to be a partner in this project, but does not necessarily endorse the views or recommendations of the resulting reports.

The project seeks to gain a deeper understanding of the linkages between conflicts over citizenship and belonging in the Great Lakes region, and forced displacement. It employs social science research under a human rights framework in order to illuminate how identity affects the experience of the displaced before, during, and after their displacement. The findings are intended to facilitate the development of regional policies that promote social and political re-integration of forced migrants by reconciling differences between socio-cultural identities and national citizenship rights that perpetuate conflict and social exclusion.

***The International Refugee Rights Initiative and the Refugee Law Project would like to thank the Open Society Institute for its generous support of this research.***

Cover photo: Nakivale settlement, Uganda (M. Klaassen)

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# SUMMARY AND RECOMMENDATIONS

## *Summary*

Sixteen years after the genocide in Rwanda, tens of thousands of refugees remain in exile. Over the past few years these refugees have come under increasing pressure to return to Rwanda: they are an ongoing reminder of ethnic tensions that are supposed to have been addressed, and the Government of Rwanda has strongly pursued the return of all of its citizens accordingly. The country is enjoying stability and economic growth, so there is no reason for anyone to remain in exile. Yet many continue to resist return.

This paper examines why one group of Rwandan refugees,<sup>1</sup> those living in Nakivale settlement in Uganda's southwest, refuse to return.<sup>2</sup> The push factors are considerable. Despite the official emphasis on voluntariness, refugees are feeling under considerable pressure from the governments of Uganda and Rwanda and the United Nations High Commissioner for Refugees (UNHCR) to repatriate, in particular as a result of the announcement of "deadlines" for repatriation.<sup>3</sup> Rwandan refugees told of how they have had their land re-allocated to Congolese refugees, have seen their rations reduced and are no longer allowed access to some social services available to other refugees.<sup>4</sup> Many live in constant fear of being forcibly repatriated and some have resorted to hiding their belongings and sleeping in the bush.

So why are they refusing to return? The findings point to a number of reasons, all of which relate in some way to the fact that they believe that if they return to Rwanda they will not be safe, let alone have equal access to their rights as citizens of the country. Overwhelmingly, the refugees view the current Rwandan government as repressive. There was frequent reference to the fact that dissent in many aspects of public and economic life is not tolerated, and that those who question the regime are subjected to human rights violations ranging from discrimination in employment to imprisonment and forced disappearance. Specifically, ethnicity is being used as a basis for repression. The findings suggest that the genocide – and the legacy of guilt, heart-searching and recriminations that have surrounded it – is being used by the Government of Rwanda as a smokescreen for political repression, particularly through the association of Hutu identity with the genocide. Images of Hutu brutality during the genocide are evoked to mute criticism.

As a result, the accusation of participation in the genocide has become one of the most feared instruments of repression. In particular, refugees fear the *gacaca* courts, a traditional community level mechanism of justice that was transformed into a tool for dealing with perpetrators of genocide. While the courts represent a pragmatic and creative response to the overwhelming need for justice, and have achieved this goal in some respects, in practice, according to those interviewed, they are increasingly vulnerable to manipulation by those seeking to settle personal grudges or as an instrument of government repression. Most refugees who had previously tried to return home to Rwanda – including under the 2009 repatriation exercise by UNHCR – recounted having had a negative experience of the *gacaca* process or government bodies linked to it. There were stories of being tortured, imprisoned, being released due to lack of evidence and then re-arrested, and of having family members killed.

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<sup>1</sup> The official number stood at approximately 18, 000 in November. See Nasra Bishumba, 2009. "Rwanda: Over 60,000 Locals Are Still Refugees within Africa", 3 November 2009. <http://allafrica.com/stories/200911030118.html> (Accessed 7 April 2010.)

<sup>2</sup> The findings, while specific to Nakivale settlement, point to wider issues relating to Rwandan refugees in Uganda more generally.

<sup>3</sup> See, for example, the deadline of July 2009 announced in a joint communiqué of the Tripartite Commission on the Repatriation of Rwandan Refugees in Uganda of April 2009, which was then extended to 31 August. ("Rwanda-Uganda repatriation deadline extended." IRIN, 10 August 2009, Kigali. <http://www.irinnews.org/Report.aspx?ReportId=85645> accessed 12 May 2010.) The issuing of deadlines appears contrary to the fundamental principles set out in the Tripartite Agreement signed by the Governments of Rwanda and Uganda and the UNHCR which governs the Commission. That Agreement clearly emphasises the voluntary character of repatriation as a "fundamental principle" and declares that refugees should be able to freely decide on repatriation "without coercion or pressure" (article 3).

<sup>4</sup> UNHCR has noted that ration reductions have been applied across the board to refugees in Uganda. The perception of the refugees remains, however, that such measures are part of a package of actions taken by the authorities to induce decisions to return.

A number of other mechanisms for invoking guilt for the genocide as a means of repression were also cited, including the operation of the Ibuka victims group,<sup>5</sup> genocide remembrance events and the promotion of anti-Hutu stereotypes. Ascription of collective guilt was also seen as a cover for enforcing the expropriation of Hutu property: the majority of those interviewed who had tried to reclaim land or other property after their initial return had failed. Instead, their land had been taken over by refugees who had fled Rwanda decades earlier and had returned in the aftermath of the genocide. Attempts to access justice had led to intimidation and exile. Not surprisingly, these refugees are not only reluctant to return home, they are scared.

Despite official rhetoric about the need to move beyond ethnicity and an effective ban on discussion of ethnic distinctives,<sup>6</sup> it is clear from the perspective of those reluctant to return home that the question of identity has remained profoundly polarised in Rwanda. Ongoing repression on the basis of ethnicity continues to feed localised ethnic divisions and create further polarisation. Far from addressing this root cause of violence current attitudes and approaches promoted by the government are creating a situation of tension, insecurity and fear. This situation threatens to shatter Rwanda's outward peace and prosperity as the cycles of violence based on the manipulation and denial of identity as a source of power remain unbroken.

However, the findings also show that although repression is often manifest in ethnicised terms, the real issue is the fact that there is little space for political opposition within Rwanda *regardless of ethnicity*. While the genocide and its immediate aftermath might have been the original cause of flight for many, ongoing political repression in Rwanda is not only preventing many refugees from returning, but is generating new refugees. In fact, almost a quarter of all those interviewed had arrived in Uganda since 2001. This version of the current realities of life in Rwanda suggests a different image from the one that the government has presented to the outside world, and indicates that the promotion of voluntary repatriation needs to proceed with extreme caution.

The findings therefore critique existing assumptions regarding durable solutions for refugees. Understandably, there is a tendency in situations of mass flight for states to craft solutions to refugee movements in group rather than individual terms.<sup>7</sup> As a result it is hardly surprising that an end to hostilities has typically been used as a key indicator that repatriation can take place and that particular groups should go home. This approach, however, often fails to recognise that war and violence may profoundly reshape a polity and, in the process, create new threats to particular individuals who may continue to require protection as refugees. Most of those interviewed in fact saw themselves not as war refugees but as victims of a "war on individuals"<sup>8</sup> by a repressive government. Many had only recently fled into exile – although often for the second or third time.

The absence of open conflict is therefore not an adequate benchmark against which to promote return. Return must be considered in terms of political openness and factors such as good governance (however that might be defined) and effective systems of justice, mechanisms that are increasingly being promoted within the ambit of transitional justice. These are more reliable indicators that it is not only safe to return home, but that return will be a genuinely *durable* solution. Successful repatriation is not about stepping over a border: it is a long term process of negotiated access to human rights protection and is strengthened by addressing threats to post-conflict recovery and reconstruction.

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<sup>5</sup> Ibuka, which means "we should always remember" in Kinyarwanda, was officially formed in 1995 as an umbrella organisation for "survivor" organisations in Rwanda to address issues of justice, memory, and social and economic problems faced by survivors.

<sup>6</sup> See for example, Law No. 47/2001 on 18/12/2001 on Prevention, Suppression and Punishment of the Crime of Discrimination and Sectarianism.

<sup>7</sup> The refugee system in Africa, through the adoption of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (hereafter OAU Convention) was constructed to recognise the need to make swift decisions in situations of large scale influx, generally in the context of war and mass violence, although it also provides for individualised applications for, and determinations relating to, asylum.

<sup>8</sup> Interview with refugee man, Nakivale, 19 November 2009.

Critical to this negotiation are questions about governmental and societal discrimination, restrictions on freedom of movement, denial of property rights, access to justice, and exclusion from governance. Ultimately, successful repatriation is about the genuine re-assertion of the bond of citizenship between citizen and state, permitting the latter to protect the former and the former to engage in dialogue on the nature of the protection required. Without re-establishing the state/citizen bond and the realisation of their full rights as citizens, refugees will continue to resist return – and others who face similar exclusion will continue to flee.

The official policy response to date from the key state and international actors in Uganda has failed to fully acknowledge the genuine protection concerns that are preventing Rwandan refugees from agreeing to repatriate. Instead, driven by complex political and other pressures, all three actors with protection obligations for this group (Rwanda, Uganda and UNHCR<sup>9</sup>) have seen fit to jointly and publically declare that refugee status for Rwandans in Uganda is no “longer justifiable or necessary”.<sup>10</sup>

Policies and practices that restrict refugee rights and livelihoods have consequently been imposed. However, to date the same authorities have not announced the corresponding legal determination – invoking the cessation clause. Such a determination would be the natural companion to the assessment that refugee status is “no longer justifiable or necessary” and would carry clear legal consequences (for instance access to the procedures at Ugandan law whereby refugees could formally and transparently challenge a determination that refugee status should cease). At the same time, the appropriate alternative – continued full enjoyment of refugee status as an effective bridge to the three durable solutions – appears *in practice and in policy* to have been disingenuously denied through increasing restrictions on rights and public rhetoric from the Governments of Rwanda and Uganda that return is the only option. Thus Rwandan refugees in Uganda are caught between a rock and a hard place. The fact that UNHCR’s comprehensive strategy on Rwandan refugees (often publically referred to as the ‘Roadmap’) *does* recognise the need for parallel tracks – engaging all three durable solutions; continued protection of those in flight; attention to the situation in Rwanda itself; and the consideration of cessation for only specific sub-groups of the population<sup>11</sup> – is sadly a reality that is far from the daily experience of Rwandan refugees eking out an existence in Nakivale.

As this report was going to press, a new development has emerged that both increases the level of anxiety within the community and, at the same time, opens up a window for greater clarity to be achieved with respect to the future of Rwandan refugees in Uganda. On 13<sup>th</sup> May 2010, a new communiqué was signed by the parties in the Tripartite Commission which clearly states that “the status of Rwandan refugees in the Republic of Uganda shall cease when the cessation clause is invoked by 2010.”<sup>12</sup> The fact that cessation appears to be imminent for *all* Rwandan refugees, rather than for particular sub-groups with respect to whom the original reason for flight may have been attenuated,<sup>13</sup> will inevitably raise alarm among the refugee community, even more particularly as Rwandan refugees continue to arrive in Uganda in significant numbers. It should be noted that consideration of cessation for sub-groups of the population has been suggested in discussions around UNHCR’s comprehensive strategy for Rwandan refugees more broadly in the region. Further, although the same communiqué does note that “a mechanism will be put in place [...] with the support of UNHCR to address cases of persons with compelling reasons as to why they cannot return to Rwanda”, reports that the majority of recent applications for asylum from Rwanda have been rejected are unlikely to contribute to refugee confidence in the process.

In this context, tens of thousands of Rwandan refugees continue to wait in suspense for the looming 31<sup>st</sup> December 2010 deadline, fearing that if they do not go “home” they will be forcibly repatriated, as has happened in the past from

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<sup>9</sup> It should be noted that despite its formal witnessing of the various Tripartite communiqués, UNHCR has indicated that it is extremely cognisant of the protection concerns raised by Rwandan refugees. It is understood that it has made representations reflecting these in line with its mandate to the state parties concerned.

<sup>10</sup> Joint Communiqué between the governments of Uganda, the Republic of Rwanda and UNHCR on the Situation of Rwandese Refugees in Uganda, 22 April 2009.

<sup>11</sup> See for example, UNHCR and Rwanda seek enduring solution for protracted refugee situations at <http://www.unhcr.org/4add7fd9.html>.

<sup>12</sup> See Joint Communiqué of the 8<sup>th</sup> Tripartite Commission Meeting, 13 May 2010, on file with authors.

<sup>13</sup> See for example Article 1 C (5) of the 1951 Refugee Convention.

Uganda and other states in the region. Instead, they are searching desperately for alternative strategies, most often through disappearing from the official radar and pretending to be Ugandan or Congolese. As a result, this group is being denied not just effective national protection, but also most of the rights concomitant with refugee status, the international protective “citizenship” that is triggered in the absence of national capacity. This is not only unacceptable within the ambit of international protection, but has created a dangerous impasse that needs to be urgently addressed – an impasse that juxtaposes the rights and safety of refugees against the interests and obligations of states.

## *Recommendations*

The long-term objective of this report is for Rwandan refugees to end their exile and once more become full citizens of a state – either of Rwanda or another state – with all the attendant rights that entails. In the meantime, it is critical that those who remain in exile, or who continue to flee, be protected. The following recommendations reflect both these long and short-term objectives.

### **To the Government of Rwanda**

Our findings point to a number of macro-level recommendations to the government of Rwanda that relate to issues of citizenship and identity, and to governance and justice. In the context of Rwanda’s vehement desire to see the return of its citizens, a process of understanding and negotiation must be undertaken if effective and sustainable enjoyment of citizenship rights and duties is to be promoted, accepted by refugees *and ultimately achieved*.

- The current political climate in Rwanda is preventing thousands of refugees from returning, despite considerable push factors in their countries of refuge. The findings have demonstrated that there is a widespread perception that Rwanda continues to be crippled by partisan politics and dangerous prejudice. In particular, it is clear that many Rwandan refugees fear persecution or discriminatory treatment on grounds of their ethnicity or ascribed association with the genocide and subsequent events if they repatriate. Fear of the *gacaca* courts is particularly acute in this regard. It is important that allegations that the *gacaca* process has been manipulated to serve interests other than justice and reconciliation, whether at a local level or as a matter of policy, are taken seriously. **It is therefore critical that Rwanda engage with the genuine concerns expressed by its refugees, open up its political space and allow for full and equal civic and political participation of all its citizens. The conduct of the elections in August 2010 is an opportunity to show the possibility of broader engagement of Rwanda’s citizens in political life.**
- The promulgation and reinforcement of singular versions of history in Rwanda, which create ethnically aligned divisions between victims and perpetrators and which do not recognise the complexities of the political *and* security history of the genocide and its aftermath, only serve to solidify the prejudice and divisionism that gave rise to the horrific events of 1994. Many Rwandan refugees believe that there is little room for their story to be heard at home, in particular those that relate to their desire to seek justice for the killings and disappearance of members of their families, crimes that may have been committed by persons connected with the current ruling party. The sense that recognition that such crimes occurred is not possible in the current political configuration creates a perception that they do not have equal access to justice, and do not have a right to enjoy equal citizenship. **There is therefore an urgent need for Rwanda to engage in a much more honest appraisal of its history, including the genocide and violence that preceded and followed it. This must translate into equal access to justice for all regardless of ethnicity or other factors, and the reform of the law and practice related to the current offence of espousing**

**“genocide ideology”, which is not only contrary to Rwanda’s international human rights obligations, but would seem to exacerbate the ill it purports to treat.<sup>14</sup>**

- If voluntary repatriation is to be encouraged, the government of Rwanda must honour its international human rights obligations, including those within the African human rights system that refer to the rights of returning populations. Article 5 of the Organisation of African Unity (OAU) Convention Governing the Specific Problems of Refugees in Africa (OAU Refugee Convention), for example, sets out a framework for voluntary repatriation and ensures that returnees are granted “the full rights and privileges of nationals of the country.” The government of Rwanda should put in place measures that also fulfil the more detailed undertakings to which it has subscribed in the various tripartite agreements it has signed relating to the return of its nationals, including: mechanisms for settling disputes relating to the property of returnees; ensuring security and protection; facilitating full and free monitoring by UNHCR in line with its international responsibilities; and improving the lives of returnees consonant with Rwanda’s development policy.<sup>15</sup>
- The research demonstrates that property restitution (in particular reacquisition of and access to land) remains a key obstacle to the return of refugees and a threat to the promotion of national reconciliation. While recognising the complexities inherent in this process, Rwanda should work to enhance the effectiveness and fairness of current systems of land dispute settlement. In this regard, it is recalled that Rwanda has signed and ratified the Great Lakes Protocol on the Property Rights of Returning Persons, which has been specifically developed for such situations. In fact Rwanda was a leading negotiator and promoter of this Protocol, which establishes the principles that should govern the recovery of property by displaced persons, creates a legal basis for resolving disputes and provides for legal remedies including compensation. National legislation must be compatible with this Protocol, which provisions are also directly justiciable before Rwanda’s courts.

### **To the Government of Uganda**

Uganda’s Refugees Act 2006 provides the appropriate framework for responding to both the protection needs of Rwandan refugees and state security requirements. Its relevant provisions must be fully implemented to ensure that Uganda fulfils its national and international obligations and avoids exacerbating an extremely fragile protection and security situation.

- Refugees are living in daily fear of being forced back to Rwanda. As a result they are being compelled to consider suboptimal survival strategies such as masquerading as Ugandan nationals or Congolese refugees. **This situation serves neither Rwandan and Ugandan state security interests nor the protection of refugees.** Ambiguous statements from Ugandan officials and UNHCR have at different times over the last few years contributed to this trajectory of fear. **It is suggested that the government of Uganda and UNHCR issue a clear statement setting out current Ugandan law and policy in a manner in which it can be clearly and credibly be transmitted to, and absorbed by, the Rwandan refugee population.** Such a statement should clarify that the cessation clauses are *currently* not being applied; that Rwandans who have refugee status are entitled to remain in Uganda; that there will be no forced return to Rwanda by the government of Uganda; and that repatriation is a voluntary option that should only be freely undertaken.
- The Ugandan authorities are entitled to consider the application of the cessation clauses in Uganda, pursuant to Section 6 of the Ugandan Refugees Act and international law. Benchmarks should be drawn up to assist in making such determinations, and shared with states of origin,

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<sup>14</sup> See, Law No. 18/2008, Law Relating to the Punishment of the Crime of Genocide Ideology adopted 23 July 2008.

<sup>15</sup> See inter alia the more extensive undertaking set out in the Tripartite Agreement agreed between the Democratic Republic of Congo with respect to its Rwandan refugee population earlier this year.

where appropriate. Benchmarks specific to the Rwandan context might also be identified and might draw on discussions that are understood to be ongoing between UNHCR and Rwanda in the context of developing a comprehensive strategy for Rwanda refugees.

- Many Rwandan refugees articulate a fear of return home, and cite incidents which are also credibly reflected in recent independent reports on the human rights situation in Rwanda. **In the event of either a particular or general declaration of cessation, it is vital that refugees are informed that they have the right to assert a continuing need for protection through a clear and transparent procedure.**<sup>16</sup> Every Rwandan refugee who wishes to challenge a decision to withdraw refugee status has a right to do so. Article 39 of the Ugandan Refugees Act which governs procedures for the withdrawal of refugee status necessitates, *inter alia*, the expert engagement of the Refugee Eligibility Committee, the service of written notice, the opportunity to make written representations and the availability of an independent appeal. In the light of the May communiqué which indicates that the government of Uganda does indeed intend to apply cessation to Rwandan refugees from 31<sup>st</sup> December 2010, it is doubly incumbent that the government of Uganda and its partner UNHCR communicate to refugees the context for such a decision and the procedures that will be followed subsequent to any such declaration. **This should include information on whether cessation will be applied to the whole population or to particular sub-groups and the kind of screening mechanisms which will be put in place to identify ongoing protection needs, with attendant safeguards and appropriate opportunities for appeal.**
- Refugees feel under incredible pressure to return. However, by law refugees may not be forced to return home against their will. This is not only a requirement of national and international law but a practical consideration. Non-voluntary return has in the past resulted in cyclical patterns of return and flight, deeply complicating the humanitarian and security situation in the region. In terms of legal obligation, policies put in place with the intent of narrowing the freedom of decision-making regarding refugee repatriation can, in certain circumstances, amount to constructive *refoulement*, a serious violation of the Ugandan Refugees Act, Article 12 of the African Charter on Human and Peoples Rights (ACHPR) and of course Article 33 of the 1951 Convention. In acute cases it may also constitute indirect mass expulsions of non-nationals as prohibited by Article 12(5) of the ACHPR.<sup>17</sup> Cutting of food rations or the denial of access to land must be based on an assessment that appropriate alternative means of self sufficiency commensurate with being able to provide for basic needs are available. **The government of Uganda has an obligation to ensure that the ongoing repatriation process is purely voluntary and does not amount to constructive refoulement.**
- Considerable political tensions exist in Rwanda. As the country approaches its next national elections in August 2010 it should be expected that asylum seekers will continue to arrive, as they have increasingly done during the first half of 2010. It is understood that Uganda has received the largest number of new arrivals of Rwandan refugees in 2010, although it is not clear whether any of these applications have been successful – in fact there are reports that considerable numbers of them have been refused. **It is important that Rwandan asylum seekers continue to have access to a fair and independent individual status determination which takes into account the current political realities in Rwanda and includes access to an appropriate independent appeal process as required by Ugandan law.**<sup>18</sup> The reference in the

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<sup>16</sup> Where refugee status may have lapsed further to the operation of the provisions of Section 25 of the Uganda Refugees Act, an application may be made for recognition of status under Section 19 of the same Act.

<sup>17</sup> African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986, art. 12(5).

<sup>18</sup> Screening for exclusion or separation should continue to be conducted for newly arrived asylum seekers as part of the usual process of refugee status determination, where appropriate. This involves a determination as to whether there are persons who are (1) excludable from

recent May Tripartite communiqué that the governments of Uganda and Rwanda have agreed to engage in a “verification” of the “allegations put across by the asylum seekers and returnees” is encouraging in this regard.

- It is noted that in the May communiqué the governments of Rwanda and Uganda have agreed to “put in place bilateral mechanisms to facilitate the return of persons not of concern to UNHCR by the end of June 2010.” Although the return of rejected asylum seekers is a prerogative of states, both the circumstances surrounding the return, and the consequences of such return, must be considered not only in terms of obligations under refugee law, but also in terms of constitutional and other international law obligations including those set out in the ACHPR, in particular Articles 5 and 12.
- Claims that those who remain outside Rwanda as refugees are either persons who were responsible for the commission of serious crimes during the genocide in Rwanda or who are engaged in armed activity must be addressed thoroughly and clearly in the interests of security and protection. Although the majority of those refugees currently in Uganda have been subjected to individual status determinations and have been screened for such case elements, the reality is that **the veil of suspicion that lingers over this group is a significant threat to the protection of the population in general, whether in Rwanda, Uganda or elsewhere.** Such suspicions have been cited both as a major driver for Rwanda’s insistence on refugee return and as an ongoing security concern on the part of Ugandan officials. They also create a huge weight of uncertainty to be borne by the refugee population. It may be important, therefore, for a clear statement to be made that determinations regarding exclusion/separation have already been carried out for the majority of the population.
  - Those persons who have been recognised as refugees further to individualised determinations (the majority of those interviewed for this research) should be considered to have already been determined as non-excludable and entitled to refugee protection until such time as they freely opt for a durable solution or are subject to the application of the cessation clauses in line with the requirements and procedures of Ugandan law.
  - Where refugees have been recognised on a group basis further to Article 25 of the Ugandan Refugees Act, and if the question of exclusion or separation and has not been individually determined, such screening should now be conducted.

### **To the International Community**

The situations encountered during the return of some Rwandan refugees to Rwanda should be a matter of acute concern to the international community. **The findings make it clear that there are legitimate reasons for Rwandan refugees refusing to return to Rwanda – and these reasons reflect many of the dynamics that were at play in the pre-genocide context in Rwanda in 1994.**

- An appropriate policy response to the situation of this group should take as a starting point the determination of the group to remain despite significant pressure to return.
- In a context where asylum seekers continue to arrive from Rwanda and internationally respected human rights organisations continue to report on serious restrictions on fundamental freedoms in the country, UNCHR, however constrained by the necessity for joint determinations with the states involved, must refrain

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refugee status further to Article I(5) of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, Article 1F of the 1951 U.N. Convention and Section 5 of the Ugandan Refugees Act; and/or (2) amenable to separation from the refugee population as required by international humanitarian law.

from actions or statements which indicate that repatriation is the preferred option, even more particularly in the context where, as in Uganda, UNHCR is a partner in refugee status determination.

- Building on the comprehensive strategy already developed for Rwandan refugees in the region more generally, UNHCR and the international community in Uganda should adopt an approach that maintains all three durable solutions as an option, namely repatriation, local integration and resettlement. In particular, there is a need to recognise that resettlement may be required for some Rwandan refugees in Uganda, including beyond the category of emergency protection need. UNHCR has supported resettlement of Rwanda refugees from Uganda on a case by case basis over the last few years.
- UNHCR and other international actors engaged with the provision of assistance and protection to Rwandan refugees, such as the World Food Programme, should ensure that any assistance policies they endorse fully accord with international law and the obligations of their mandates.<sup>19</sup> Reduction in, or denial of, food rations and other assistance, where there is no evidence that the refugees affected have an independent capacity to generate basic support, and where it violates inter alia the principle of non-discrimination, is unacceptable, as is the attempt to use such cuts in violation of international law as an inducement to repatriate.
- In addition to any clarification made by the government of Uganda, the international community through UNHCR should make appropriate statements clarifying that the cessation clause does not currently apply; that repatriation must be undertaken voluntarily; and that persons who assert a continuing fear of persecution, including post any declaration of cessation, will not be required to return to Rwanda without thorough consideration of their claim.
- In light of the above, regional states (through, for example, the framework of the International Conference on the Great Lakes Programme of Action on Humanitarian, Social and Environmental Issues)<sup>20</sup> should support an assessment exercise aimed at establishing on-going protection and security concerns relating to Rwandan refugees in the region. While recognising the considerable challenges involved, UNHCR, related UN agencies and NGOs should embark on continuous monitoring of the situation of refugees and conditions of returnees in countries of origin.
- The international community must recognise the complexities of the relationship between Uganda and Rwanda and take these into account in considering long term solutions for Rwandan refugees. In particular, consideration should be given by states operating resettlement programmes to prioritise Rwandan refugees who cannot return and for whom integration in countries in the region is not appropriate.<sup>21</sup>

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<sup>19</sup> It is understood that UNHCR has indicated to the Government of Uganda that it is concerned about its decision to deny access to land for Rwandan refugees.

<sup>20</sup> International Conference on the Great Lakes Region, Pact on Security, Stability and Development in the Great Lakes Region 14 and 15 December 2006.

<sup>21</sup> In October 2001 for example UNHCR assisted in resettlement of persons (political opponents) with respect to whom the Defence Ministers of Uganda and Rwanda had agreed should be resettle in a third country. IRIN, "RWANDA-UGANDA: Uganda, Rwanda Defence Ministers Pledge to Resolve Conflicts Amiably," 30 October 2001.

# BACKGROUND

## *Rwanda's Genocide*

It would be impossible to exaggerate the horrors of genocide. The 1994 genocide in Rwanda was ferocious, ugly and appalled the world – although too late for approximately 800,000 people. It stands as a defining moment for everyone concerned with Rwanda, Africa and international collective obligations more generally, and raised serious questions around issues of justice, human rights, and the role and capability of the international community to enforce basic shared values.<sup>22</sup> Sixteen years later, its ramifications continue to be felt throughout the region.

The genocide, which began on 6 April 1994, was sparked off by the shooting down of the plane carrying the then President Habyarimana. During the course of the next 100 days, almost a million people were killed in an attempt by an extremist Hutu minority to exterminate Tutsis and “moderate Hutu”. It followed a four-year civil war during which related violence had killed thousands and displaced hundreds of thousands more, mainly Hutu.<sup>23</sup> The genocide ended with the military victory of the Rwandan Patriotic Front (RPF), a rebel group founded by Rwandan exiles based primarily in Uganda. The RPF’s commander, Paul Kagame, now serves as Rwanda’s president.

The genocide was the conclusion of decades of political systems that increasingly polarised identities and imbued them with considerable political, economic and social salience.<sup>24</sup> The benefits of hindsight show it as a history stacked against the equitable and democratic realisation of rights regardless of ethnicity. Tutsis – or specifically two Tutsi clans who had a monopoly on power<sup>25</sup> – were the main beneficiaries under Belgium’s unjust colonial rule, which had instituted a system of rigid ethnic classification, requiring, for example, that identity documents state ethnicity.<sup>26</sup>

In the late 1950s and early 1960s, colonialism ended with a social revolution and a Hutu overthrow of the “Tutsi oligarchy”. Rwanda became a republic “with the acquiescence, if not connivance, of the departing colonisers”.<sup>27</sup> Hundreds of Tutsis were killed in this period, creating a major wave of refugees. Various attempts by Tutsi-aligned groups to invade from neighbouring Uganda and Tanzania failed, leading to more killings in the 1970s. By the early 1990s, approximately 100,000 Tutsis were thought to have fled.<sup>28</sup> Then in 1990, the RPF invaded Rwanda from Uganda. The ensuing conflict increased pressure for a negotiated settlement, and in 1993 President Habyarimana signed a power-sharing agreement with the RPF, ostensibly ending the war. However, the power sharing agreement not only failed to resolve conflict, but inadvertently exacerbated it: neither Hutu hardliners nor the RPF had any interest in observing the accord.<sup>29</sup>

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<sup>22</sup> P. Uvin, 2001. “Reading the Rwandan Genocide.” *The International Studies Review*, 3(3) p. 75-99, Fall, p. 76.

<sup>23</sup> Ibid, p. 75.

<sup>24</sup> This paper does not try to offer an overview of the deeply complex historical factors that led to the genocide – many of which continue to be hotly contested both within Rwanda and outside.

<sup>25</sup> G. Prunier, 1995. *The Rwanda Crisis 1959 – 1994. History of a Genocide*. London: Hurst & Company.

<sup>26</sup> There has been considerable debate over the source and nature of ethnic divisions between Hutu and Tutsi in Rwanda. Two extreme interpretations are commonly proffered: the essentialist interpretation, which is the official Hutu discourse, and the social-constructivist interpretation favoured by the current Tutsi-dominated government. Uvin points to a more nuanced analysis in which Hutu and Tutsi have different historical origins – the colonisers did not invent them from nothing – but the meaning of these categorisations have changed over time and taken on different significance, becoming more rigid during colonialism and increasingly linked to inequalities of power and opportunity. In post-colonial Rwanda, such differences became increasingly entrenched through violence. (P. Uvin, 2001, p. 78.)

<sup>27</sup> P. Uvin, 1997. “Prejudice, Crisis, and Genocide in Rwanda.” *African Studies Review*, 40(2) p. 91 – 115, September, p. 96.

<sup>28</sup> Ibid.

<sup>29</sup> The former felt excluded from the settlement and the latter was unwilling to share power in any meaningful way. M. Mamdani, 2007. “The Politics of Naming: Genocide, Civil War, Insurgency”. London Review of Books, 8 March. [http://www.norman-paech.de/uploads/media/LRB\\_Mamdani\\_The\\_Politics\\_of\\_Naming.pdf](http://www.norman-paech.de/uploads/media/LRB_Mamdani_The_Politics_of_Naming.pdf) (Accessed 1 April 2010)

Although responsibility for the shooting down of Habyarimana's plane remains hotly contested, what is clear is that the president's death set the genocide in motion<sup>30</sup> – a genocide that had been carefully planned and was meticulously executed.<sup>31</sup> Representatives of the state existed all over the country<sup>32</sup> which created the structure that allowed genocide to be unleashed with such brutal efficiency, allowing large numbers of perpetrators and a maximum number of victims.

Consequently, Rwanda's history is one of polarisation and unequal citizenship articulated in ethnic terms, which continues to haunt Rwanda to this day. Indeed, while Rwanda's achievements in the aftermath of the genocide are substantial, there is growing unease with the image presented to the outside world of a country that has made a remarkable recovery. In reality many Rwandans continue to feel excluded from – and threatened by – the political and social processes in their country.<sup>33</sup> Of particular concern is the way in which the government has used the genocide to monopolise and consolidate state authority by promoting a corporate view of ethnicity that sees all Hutus labelled *génocidaires*,<sup>34</sup> and continues to use the threat of future genocide as an excuse for silencing opposition.

### *The Aftermath of Genocide*

In the wake of the genocide, more than two million people fled from Rwanda to neighbouring countries in possibly the largest mass exodus in Africa's history.<sup>35</sup> The international community's response was chaotic at best and culpable at worst as it failed to take cognisance of the presence of *génocidaires* and those intent on generating additional violence among the civilian population. Despite the exclusion clauses set out in the two principle Refugee Conventions<sup>36</sup> that prohibit individuals who have committed serious crimes from being considered refugees, little action was taken to screen the fleeing refugees and to generate security in the camps. Instead, the former Rwandan armed forces, the *Forces Armées Rwandaises* (FAR), were able to regroup and restructure within the camps to devastating effect.<sup>37</sup> This failure to distinguish *génocidaires* from genuine refugees triggered a series of actions and assumptions that sent shock waves throughout the region that continue to be felt today.<sup>38</sup>

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<sup>30</sup> It goes without saying that there continues to be much controversy regarding who shot down the plane carrying President Habyarimana. Blame has often been directed at the current government. However, the recent arrest in France of the former president's wife, Agathe Habyarimana, on a seven-count international arrest warrant issued by the Rwandan government, charged with genocide, complicity in genocide, conspiracy to commit genocide, creation of a criminal gang, murder and conspiracy to commit murder, extermination, and public incitement to commit genocide, reflects, in part, the Government of Rwanda's assertion that Hutu hardliners were responsible. <http://www.newyorker.com/online/blogs/newsdesk/2010/03/the-arrest-of-madame-agathe.html#ixzz0nbKEuYGf>

<sup>31</sup> As Prunier says, it was premeditated act of political mass murder, not a spontaneous outpouring of primordial ethnic hatred as widely portrayed in the media (Prunier, 1995.) Likewise Uvin asserts that the idea of "weak" states that is so often applied within Africa did not apply in Rwanda on the basis of the fact the government, in needing to assert its legitimacy, carried out extensive "state building". (Uvin, 1997, p. 97.)

<sup>32</sup> Ibid, p. 98.

<sup>33</sup> A report commissioned by the Commonwealth Human Rights Initiative to assess Rwanda's eligibility to join the Commonwealth talks of how "[the government] uses the constitution opportunistically as a facade, which hides the exclusionary and repressive nature of the regime; relies on power structures that sometimes run parallel to, and sometimes cross-cuts, the formal government; and in which the army plays a central role... Rwanda has relied heavily for its revenue... on the plunder of the mineral resources of the DRC – and extraordinarily generous development assistance ... The RPF has used an extraordinary amount of violence, domestically and internationally, in the pursuit of its illegitimate aims. It is responsible for killing almost 500,000 persons, whether citizens or not, and is responsible for the deaths of many times more through displacement, malnutrition and hunger." ("Rwanda's Application for Membership of the Commonwealth: Report and Recommendations of the Commonwealth Human Rights Initiative." August 2009.)

[http://www.humanrightsinitiative.org/publications/hradvocacy/rwanda's\\_application\\_for\\_membership\\_of\\_the\\_commonwealth.pdf](http://www.humanrightsinitiative.org/publications/hradvocacy/rwanda's_application_for_membership_of_the_commonwealth.pdf) (accessed 10 April 2010)

<sup>34</sup> C. Newbury, 1998. "Ethnicity and the Politics of History in Rwanda." *Africa Today*, 45(1) p. 7, January-March. Indeed, in a 2008 amendment to the Rwandan constitution, the genocide was defined specifically as a "genocide of *Tutsis*". See articles 14 and 51, emphasis added.

<sup>35</sup> The Lawyers Committee for Human Rights, 2002. *Refugees, Rebels and the Quest for Justice*.

<sup>36</sup> Article 1F (a) to (e) of the 1951 United Nations Convention relating to the Status of Refugees and Article I(5) of the 1969 OAU Convention. For a full legal analysis see Lawyers Committee for Human Rights, 2002.

<sup>37</sup> Ibid

<sup>38</sup> The extent to which *génocidaires* were not distinguished from refugees also led to a major shift within the humanitarian establishment, with growing awareness of the political ramifications of humanitarian action as the concept of the passive "good" refugee without agency or political intention began to be challenged. It was recognised that humanitarian action carried out without corresponding attention to justice and international humanitarian law obligations could create the context for situations of massive violations of human rights.

Most notorious were the events of September 1996 in which thousands of refugees were slaughtered in the camps on the Rwanda-Democratic Republic of Congo (DRC)<sup>39</sup> border following an invasion by the Rwandan army and their Congolese allies, on the pretext of rooting out *génocidaires*.<sup>40</sup> The ongoing conflict in eastern DRC is in part a legacy of this inaction and remains inextricably tied to the genocide and its aftermath.<sup>41</sup> Following the attacks on the camps, hundreds of thousands of Rwandans returned home while others disappeared further into Congo. This mass return allowed for other states in the region to push Rwandans out, including approximately 500,000 from Tanzania in 1996.<sup>42</sup>

Rwandan Hutus who fled following the genocide “return as refugees, humbled and humiliated, because they are collectively charged with the heinous crime of genocide.”<sup>43</sup> As Lemarchand says, “[n]othing is more specious than the argument that after the destruction of the refugee camps [in the Democratic Republic of the Congo] in November 1996, and the return perhaps of as many as half a million refugees to Rwanda, the only Hutu left behind were the *génocidaires*.”<sup>44</sup> The failure by states of asylum to screen refugee populations and bring *génocidaires* in their midst to justice has only exacerbated the ascription of guilt those who remain in exile and undermined the capacity of neighbouring states to challenge this notion.

Today, images of Hutu brutality during the genocide are evoked to promote collective assumptions of guilt and to mute criticism. The sheer scale of death in Rwanda in 1994 is staggering, with approximately three quarters of the registered Tutsi population in Rwanda killed during the genocide.<sup>45</sup> Harder to ascertain are the numbers of those involved in the carrying out the killings as statistics remain highly contested and nearly impossible to evaluate. Estimates advanced by government officials have been as high as 3 million,<sup>46</sup> although Straus estimates between 175,000 and 210,000 perpetrators arguing that most of the killing was done by 10% of *génocidaires*.<sup>47</sup> Ascertaining the numbers of those who were killed in the aftermath of the genocide is likewise fraught. Gersony, in an unpublished report for the UN in 1994, concluded that between 25,000 and 45,000 Rwandans were killed by the RPF in the aftermath of the genocide.<sup>48</sup> The report, which had been commissioned in order to *encourage* Rwandan refugees to return, was quickly hushed up as the findings were clearly going to have the opposite effect. Regardless of the exact figures, however, of key importance with regards to the return of refugees – who are mainly Hutu – is both the tendency of the RPF to inflate the numbers of those involved in the genocide, and the fact that the RPF has never anywhere been held accountable for its actions – whether within Rwanda or in DRC (although there have been some domestic prosecutions).<sup>49</sup> Even the International Criminal Tribunal for Rwanda (ICTR)<sup>50</sup> has, under the watch of various prosecutors, investigated but failed to prosecute the RPF for any of the atrocities committed.<sup>51</sup>

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<sup>39</sup> Then called Zaire.

<sup>40</sup> Uvin, 2001, p. 75.

<sup>41</sup> For a detailed overview of conflict in eastern DRC's North Kivu province, see International Refugee Rights Initiative and Social Science Research Council, 2010. “*Who Belongs Where? Conflict, Displacement, Land and Identity in North Kivu, Democratic Republic of Congo*”, March.

<sup>42</sup> For a description of the operation, see Beth Elise Whitaker, “Changing Priorities in Refugee Protection: The Rwandan Repatriation from Tanzania,” UNHCR New Issues in Refugee Research, Working Paper No. 53, February 2002.

<sup>43</sup> C. Fisiy, 1998. “Of Journeys and Border Crossings: Return of Refugees, Identity, and Reconstruction in Rwanda.” *African Studies Review*, 41(1) p. 17-28, April.

<sup>44</sup> R. Lemarchand, 1998. “Genocide in the Great Lakes: Which Genocide? Whose Genocide?” *African Studies Review*, 41(1): 3 – 6, April, p. 14.

<sup>45</sup> Alison Des Forges, 1999. *Leave None To Tell The Story: Genocide in Rwanda*. Paris and New York: Human Rights Watch and International Federation of Human Rights.

<sup>46</sup> Straus talks about how this number was claimed by a number of senior government officials in the aftermath of the genocide. He also sites similar claims made to Philip Gourevitch, 1998, in *We Wish to Inform You that Tomorrow We Will Be Killed with Our Families: Stories from Rwanda*. (New York: Farrar Straus and Giroux, p 244.) See Scott Straus, 2004, “How many perpetrators were there in the Rwandan Patriotic Front? An Estimate.” *Journal of Genocide Research*, vol. 6, no. 1, pp. 85 – 98.

<sup>47</sup> Straus, 2004. This is also cited in René Lemarchand, “Rwanda: The State of Research”, 2007. Online Encyclopaedia of Mass Violence, November, p. 12. [http://www.massviolence.org/Article?id\\_article=51](http://www.massviolence.org/Article?id_article=51) (Accessed 25 February 2010)

<sup>48</sup> The report, which had been commissioned in order to encourage Rwandan refugees to return, was quickly hushed up as the findings were clearly going to have the opposite effect. (Des Forges, 1999.)

<sup>49</sup> Further to the transfer of the case from the ICTR, four Rwandan military officers were charged with war crimes in Rwanda in June 2008 for the killing of 15 civilians, of which 13 were clergy. This is the only case involving charges of war crimes against RPF officers, despite estimates

## *The War Is Over: Time to Return Home*

Official rhetoric claims that all is well in Rwanda, pointing to significant recovery since the genocide. Since 1994, Rwanda's per capita gross domestic product has almost tripled, education and health systems have improved dramatically, tourism is booming and there is broadband internet connection throughout much of the country. Kigali, its capital, gives all the appearance of orderliness and progress, and is home to the only parliament in the world with more women than men.<sup>52</sup> Over the past decade, the international community, heartened by rapid economic development and riddled with guilt for their inaction during the genocide, has thrown its support behind President Kagame's government, evidenced by its recent acceptance into the group of Commonwealth states. In this official version of life in Rwanda, there is no reason for anyone to remain in exile.

However, although many Rwandans *have* returned home, there continue to be significant numbers who are reluctant to do so. By the end of 2003, 80,000 registered Rwandans remained in exile,<sup>53</sup> a number that had only reduced to 63,441 by 2009 according to Rwanda's Ministry of Local Government (MINALOC), with the greatest number in Uganda.<sup>54</sup> If unregistered exiles were to be included the numbers would be far higher. In March and April 2010 alone, for example, 1,312 officially recognised asylum seekers arrived in Uganda, as Rwandans continue to flee the country.<sup>55</sup>

Meanwhile, and despite the reality of new displacement, there has been an intensive effort by the government of Rwanda and the international community to repatriate all Rwandans, motivated by both a general understanding of repatriation as the most favourable solution and a strong desire on the part of Rwandan authorities to repatriate its nationals. Indeed, over the past decades, repatriation has been pushed globally as the best of the three durable solutions to displacement, viewed as a tidy way of returning everyone to their "right" place. While displacement sheds light on the failure of the state, the ability for people to return to their former abodes is seen as evidence that such failures have been addressed. Unfortunately, the displaced are all too often pushed or forced to return home even when their circumstances have not qualitatively changed.<sup>56</sup>

Rwandan refugees are no exception to this experience – although a striking feature of this particular repatriation process is the extent to which the Rwandan government itself has aggressively promoted the return of all its citizens.<sup>57</sup> There are a number of reasons for this, including most notably security fears and a concern for the

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by the UN that between 25,000 and 45,000 persons were killed by the RPF in 1994 – a figure that is only likely to be conservative. (Human Rights Watch, Country Report, 2009). At least 32 RPF members have been prosecuted for their conduct during 1994 but that most of those convicted were ordinary soldiers of lower ranks and received relatively lenient punishments. ("[Law and Reality: Progress in Judicial Reform in Rwanda](#)," Human Rights Watch July 2008.)

<sup>50</sup> The ICTR was established in November 1994 by the United Nations Security Council (UNSC) at the behest of the Rwandan government to investigate and prosecute those alleged to have committed genocide, crimes against humanity, and violations of Article 3 Common to the Geneva Conventions and its additional Protocol II, either by commission or omission.

<sup>51</sup> The ICTR Prosecutor has however transferred to Rwanda at least one case involving charges relating to serious crimes by the RPF.

<sup>52</sup> Philip Gourevitch, 2009. "The Life After: Fifteen years after the genocide in Rwanda, the reconciliation defies expectations." *The New Yorker*, May 4.

<sup>53</sup> By the end of 2008, there were 77,240 registered Rwandan refugees in neighbouring African countries. See World Refugee Survey, US Committee for Refugees, 2009. <http://www.refugees.org/FTP/WRS09PDFS/RefuandAsylumseek.pdf> (accessed 1 March 2010)

<sup>54</sup> Nasra Bishumba, 2009. "Rwanda: Over 60,000 Locals Are Still Refugees Within Africa", 3 November 2009. <http://allafrica.com/stories/200911030118.html> (Accessed 7 April 2010.) The numbers vary with Uganda leading with 17,291 refugees, followed by the Democratic Republic of Congo with 17,014, Congo Brazzaville 6,922, Zambia 5,098, Malawi with 4,453 and Zimbabwe with 3,077, Kenya has 2,437 refugees, South Africa with 2,114, Cameroon 1,438, Togo 902, Mozambique with 612 and 607 live in Benin.

<sup>55</sup> Arrivals have also been noted elsewhere in the region, for example in Burundi in late 2009. "Over one million Rwandan refugees face forced repatriation from Uganda." <http://english.souslemanguier.com/nouvelles/news.asp?id=11&pays=290&idnews=23698> (accessed 17 May 2010)

<sup>56</sup> As Pottier comments, "refugees fear and 'know' that it is camp conditions rather than an informed reading of the region's political scene which dictates UNHCR's disposition vis-à-vis repatriation." J. Pottier, 1996. "Relief and Repatriation: Views by Rwandan Refugees; Lessons for Humanitarian Aid Workers." *African Affairs*, 95(380) p. 403-429, July, p. 423.

<sup>57</sup> The situation provides an interesting contrast to the current government in Burundi which, while welcoming the return of its citizens, has also pushed for alternatives to be found in a context in which there is a chronic shortage of land. See IRRI, Rema and SSRC, 2009. "Two People

country's public image. In the case of the former, and as President Kagame knows only too well, nationals outside of their country can be a political liability at best and a security threat at worst. Some are also assumed to be *génocidaires* who should be brought to justice. In the context of his own experience of political and military organisation in exile – the RPF, the force led by President Kagame to fight his way back into Rwanda, was formed by exiles in Uganda – President Kagame sees all too clearly the need, *inter alia*, to prevent rebellion brewing from outside of the country. The political role played by refugees – including in forcing changes of government – is a motif of African history. It is one of the reasons why the 1969 OAU Refugee Convention includes specific restrictions on political and other rights of refugees, and recognises that notwithstanding the “peaceful and humanitarian” nature of asylum<sup>58</sup> refugee populations may constitute a “threat” to the host or other states.<sup>59</sup>

Further, and given the ongoing failure of asylum states to distinguish *génocidaires* and others who do not deserve protection as refugees, from those who *are* entitled to refugee status, the government of Rwanda's call for refugees to return has become somewhat embroiled in its demand for governments in the region to hand over suspected *génocidaires*. These apprehensions have, in turn, created a parallel discourse implying that those who do not return are resisting because they fear justice. This rhetoric advances the notion that there is no legitimate reason not to return. As Rwanda's Minister for Local Government, Christopher Bazivamo, is reported to have said, “The Rwandan government [has] proved its worth through its good governance and is ready to see all Rwandans living as refugees in other countries return back home. Rwanda has achieved maximum security, and this obviously guarantees peace for everyone. We are having Americans, Europeans and other nationals applying for Rwandan citizenship, why should our people not relinquish their refugee status and come home?”<sup>60</sup>

Outside of Rwanda, the timeliness of the repatriation effort has been little questioned by states. Since 2002, tripartite agreements have been signed throughout the region,<sup>61</sup> reflecting a policy shift on the part of UNHCR from facilitating return to actively promoting it.<sup>62</sup> Governments hosting Rwandan refugees, facing resource constraints and concerned about security risks, have been all too happy to oblige. Meanwhile the international community, consumed with guilt for its inaction and incompetence during and in the aftermath of the genocide, has also been complicit in promoting repatriation. Despite UNHCR's official recognition that a regime change in a country “may not always produce a complete change in the attitude of the population, nor, in view of his or her past experiences, in the mind of the refugee,”<sup>63</sup> little has been done publically to examine the extent to which this is the case in Rwanda and what the implications might be of such an assessment for the formal promotion of repatriation as the preferred durable solution for Rwandan refugees.<sup>64</sup> Inevitably, this approach has translated into ever decreasing protection for Rwandan refugees.

In order to end the process once and for all, Kigali has been increasingly pushing for the invocation of cessation – a mechanism within refugee law that allows for a determination that a refugee is no longer in need of international protection – arguing that the conditions in Rwanda that led to mass exodus have changed in a fundamental, durable and effective way. Despite the fact that invocation of the cessation clauses is ultimately a matter for the host country (of course where group cessation is declared that decision will also involve consultations between UNHCR and both

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Can't Share the Same Pair of Shoes: Citizenship, Land and the Return of Refugees to Burundi.” Citizenship and Displacement in the Great Lakes Region, Working Paper no. 2, November.

<sup>58</sup> Article II(2) of the OAU Convention is quite clear in this regard, stating that, “the grant of asylum to refugees is a peaceful and humanitarian act, and shall not be regarded as an unfriendly act by any member State.”

<sup>59</sup> Of course a number of such rights restrictions may no longer be permissible in the context of the growth since 1969 of African human rights protections, in particular those enshrined in the African Charter on Human and Peoples Rights.

<sup>60</sup> Nasra Bishumba, 2009. “Rwanda: Over 60,000 Locals Are Still Refugees Within Africa”, 3 November 2009.

<http://allafrica.com/stories/200911030118.html> (Accessed 7 April 2010.)

<sup>61</sup> Rwanda has signed tripartite agreements with the UNHCR and Burundi, DR Congo, Malawi, Mozambique, Namibia, Uganda, Zambia and Zimbabwe.

<sup>62</sup> Human Rights First, 2004. “A Decade of Unrest: Unrecognised Refugees in Rwanda and the Future of Protection in the Great Lakes.” p. 13.

<sup>63</sup> UNHCR Handbook, *Voluntary repatriation: international protection*.

<sup>64</sup> It is noted, at the same time, that one of the four pillars of UNHCR's comprehensive strategy on Rwandan refugees involves consideration of the situation in Rwanda and confidential discussion of possible benchmarks for cessation in terms of changes in that situation.

the host country and country of asylum), it has actively been discussed and promoted by Rwanda within the tripartite mechanisms and the Rwandan Minister of Local Government recently said that the cessation clause will be implemented at the end of 2011.<sup>65</sup> Not surprisingly, as a result, given the geopolitical context, the involvement of the key international actors in the return process has been fraught and highly controversial.<sup>66</sup>

Therefore with neighbouring countries reluctant to offer Rwandans the opportunity to apply for citizenship,<sup>67</sup> asylum under threat, and with resettlement all but impossible except in extreme protection emergencies,<sup>68</sup> repatriation – and *immediate* repatriation at that – is the only durable solution which *in practice* is being offered to Rwandan refugees.

### *The Potential for Re-asserting Citizenship: A Framework for Analysis*

So what does repatriation mean in this context – a context in which the state, in effect, has expressed hostility towards those in exile, yet is putting enormous pressure on them to return? What are the implications for refugees' ability to return to Rwanda and genuinely re-assert their citizenship? The story of this group of refugees, and many others who have found themselves in similar circumstances – caught in a protracted refugee situation, under immense pressure to return, yet convinced that return would endanger their safety – makes it clear that debate on repatriation needs to be broadened and reconceived.

Globally, the success of the return process has become narrowly defined: once someone has stepped over the border back into her land of origin, she has successfully repatriated. Repatriation, in effect, is reduced to little more than a formalist process. As a result, the return process is disengaged from the *political* implications of an individual's capacity to meaningfully (re)assert citizenship, and therefore fails to address root causes of conflict and insecurity, doing little to prevent the possibility of future displacement.<sup>69</sup> In order to counteract this stunted view of repatriation, Long has argued for the re-politicisation of the process of repatriation – or what she refers to as *empatriation*<sup>70</sup> – which creates the conditions for a new relationship between people and state, and offers greater hope for return genuinely to function as a durable solution:

Repatriation involves the re-linking of a refugee to forms of national protection, symbolised through their physical return to their country of origin. A refugee is recognised to have need of international protection not because they are merely displaced, from their country of origin, but because of the inability — or active unwillingness — of their own national state to provide protection of their fundamental human rights.<sup>71</sup>

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<sup>65</sup> Frank Kanyesigye, 2010. "Rwandan refugees urged to return home". 29 March 2010, <http://www.newtimes.co.rw/index.php?issue=14215&article=27520> (accessed 7 April 2010). UNHCR claims that there has only been a decision to revisit the question at that time, not an agreement on invocation of the clause.

<sup>66</sup> In 1996, for instance, UNHCR and the government of Tanzania issued a joint statement declaring Rwanda "safe for return" and announced that December 31 2006 was the date by which the almost 600,000 Rwandan refugees in the country were expected to go home. When tens of thousands of refugees began to leave the camps to avoid repatriation, the army got involved. As a result, approximately 500,000 Rwandan refugees were forcibly repatriated with the acquiescence of UNHCR. (See Human Rights First, 2004.)

<sup>67</sup> As B. Manby notes, "even where refugees make progress in terms of economic and social integration, there are often no possibilities of converting refugee status into permanent residence and citizenship." (B. Manby, 2009, *Struggles for Citizenship in Africa*. Zed Books: London and New York.)

<sup>68</sup> For instance, on average only approximately 100 Rwandans have been resettled to the United States annually since 2003. See "Proposed Refugee Admissions for Fiscal Year 2006". Report to the Congress, Submitted on behalf of the President of the United States to the Committees on the Judiciary United States Senate and United States House of Representatives in fulfilment of the requirements of Section 207(e) (1)-(7) of the Immigration Act, United States Department of State and Department of Homeland Security and Department of Health and Human Services. <http://ifs.ohio.gov/refugee/docs/FY%202006%20Report%20to%20the%20Congress.pdf> (Accessed 15 May 2010)

<sup>69</sup> The case for repatriation to be put into its political context is eloquently articulated by K. Long, 2010. "Home Alone? A review of the relationship between repatriation, mobility and durable solutions for refugees". UNHCR Policy Development and Evaluation Service, March.

<sup>70</sup> K. Long, 2008. "State, Nation, Citizen: Rethinking Repatriation." Refugee Studies Centre Working Paper No. 48, Oxford, August, p. 35.

<sup>71</sup> Long, 2010, p. 3. As Long also makes clear, whereas return across the border is merely a "symbol" of re-linking of a refugee to forms of national protection, within this formulation re-*empatriation* involves a set of processes that can occur even without physical return.

In the context of this standard, the genuine realisation of citizenship, including access to all the rights that are bound up with it, becomes a substantially more robust indicator of genuine *empatriation* – of the *durability* and functionality of return – than mere physical movement across a border (and indeed may not even require the latter). Consequently this paper considers the issue of repatriation for Rwandan refugees within this framework and measures both the success of repatriation, and the legitimacy of the refusal to repatriate, within this broader context. The absence of such markers of access to citizenship rights raises questions about the legitimacy and durability of repatriation. In Rwanda, where the legitimacy of the state as an entity that is capable of permitting and encouraging the full expression of political and civil rights for all its citizens is in question, the current concept of “return”, which focuses simply on geographical displacement as the primary signifier of a *durable* solution, is highly suspect.

## *The Legal Framework for Repatriation*

Against the background of Rwandan and Ugandan constitutional and international obligations, the specific framework for the Uganda/Rwanda repatriation effort is the Tripartite Agreement signed between the governments of Uganda and Rwanda and the UNCHR in July 2003. It is still in force.<sup>72</sup> In setting out the legal context for the repatriation effort, the agreement recognises the “essentially voluntary character” of the repatriation programme, obliges the government of Uganda to ensure that refugees are able to “freely decide” on repatriation “without coercion or pressure”, and acknowledges that the status of those who do not choose to repatriate will continue to be governed by international protection principles including those set out in the OAU and UN Refugee Conventions (article 3; clause 1).<sup>73</sup> The Ugandan tripartite is short on detail with respect to alternatives to voluntary repatriation, relying simply on general references to principle such as, for example, UNHCR’s commitment to “continue to provide international protection to those who do not opt to repatriate” (article 5, clause 5).

At the 6<sup>th</sup> meeting of the Tripartite Commission of the governments of Rwanda and Uganda and UNHCR, held on 22 April 2009, a number of resolutions were adopted with the declared aim of repatriating all remaining Rwandan refugees from Uganda by 31 July 2009. The communiqué stated “the retention of refugee status by present Rwandan refugees is no longer justifiable or necessary.”<sup>74</sup> Despite the obvious implications of this assertion, the cessation clauses of Uganda’s Refugee Act 2006 and the 1969 OAU Convention and 1951 UN Convention were conspicuously not invoked.<sup>75</sup> Cessation of refugee status is a mechanism within refugee law that allows for a determination that a refugee is no longer in need of international protection.<sup>76</sup> According to the UN Convention, cessation of refugee status can occur in a variety of situations, including in situations when “the circumstances in connection with which he [or she] has been recognised as a refugee have ceased to exist.”<sup>77</sup> Cessation can be applied on an individual basis, or, as is done more frequently, to a group of refugees sharing similar reasons for their original flight. Once the cessation clause is applied to a particular refugee or group of refugees they cease to be refugees and may be returned, even involuntarily, to their home country. It is clear, however, that even if cessation is declared generally for a particular group of refugees, individuals within the group should be afforded the opportunity to make a case that the particular circumstances of their cases merit continued international protection. This is a legal determination and involves an objective assessment of the situation in Rwanda.<sup>78</sup>

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<sup>72</sup> Tripartite Agreement between the governments of Uganda and Rwanda and the UNHCR, signed in October 2003.

<sup>73</sup> UNHCR is identified as the entity specifically responsible for “verifying and ascertaining the voluntary character of each refugee’s decision to repatriate” (article 5, clause 1). In terms of reintegration, the government of Rwanda is charged, *inter alia*, with utilising “existing mechanisms to settle all disputes relating to ownership and enjoyment of property rights of returnees” (article 4, clause 5). To ensure implementation of the Agreement a special Tripartite Commission is established charged with operationalising the specifics of the Agreement (article 6).

<sup>74</sup> Joint Communiqué between the governments of Uganda, the Republic of Rwanda and UNHCR on the Situation of Rwandese Refugees in Uganda, 22 April 2009.

<sup>75</sup> See Article 6 of The Refugees Act, 2006 and Article 4 of the 1969 Convention.

<sup>76</sup> Cessation of refugee status is provided for in both the 1951 UN Convention and the 1969 OAU Convention – although the basis upon which a declaration of cessation can be made is described in broader terms in the latter Convention. (Article 1C of the 1951 UN Convention and article I(4) of the 1969 OAU Convention.)

ion. (Article 1C of the 1951 UN Convention and article I(4) of the 1969 OAU Convention.)

<sup>78</sup> As noted in the UNHCR Handbook, “circumstances” in the context of cessation refers to fundamental changes in the country, which can be assumed to remove the basis of the fear of persecution.” (UNHCR RSD Handbook, paragraph 135).

It has been argued that the omission of discussion of cessation from the communiqué indicated that despite the rhetoric all parties “recognise[d] that there remain grounds under which some Rwandans continue to require protection in Uganda.”<sup>79</sup> At the same time, from the perspective of a vulnerable Rwandan refugee population already facing an uncertain future in Uganda the communiqué as a whole may have sounded like a *de facto* declaration of cessation. It would have been difficult to otherwise interpret the draconian regime imposed by the communiqué, involving severe restrictions on livelihoods, the declaration of a “deadline” for repatriation and the statement that refugee status is “no longer justifiable or necessary.”

In May 2010 another significant, and long feared, milestone was reached for the Rwandan refugee community. Further to a meeting of the Tripartite Commission on May 13<sup>th</sup>, a new communiqué was signed by the governments of Uganda and Rwanda and UNHCR. At the heart of the communiqué was the statement that “the status of Rwandan refugees in the Republic of Uganda shall cease when the cessation clause is invoked by 2010.”<sup>80</sup> The communiqué noted at the same time that “a mechanism” would be “put in place [...] with the support of UNHCR to address cases of persons with compelling reasons as to why they cannot return to Rwanda”. In this regard the two governments agreed to engage in a “verification” of the “allegations put across by the asylum seekers and returnees”. At the same time the parties did agree to work together to ensure that “all Rwandan refugees voluntarily repatriate by 31<sup>st</sup> December 2010.” Finally, it was reiterated that while in Uganda, Rwandans would not be permitted access to land to cultivate and “bilateral mechanisms’ would be put in place “to facilitate the return of persons not of concern to UNHCR by the end of June 2010.”

The fact that cessation appears to be imminent for *all* Rwandan refugees in Uganda, rather than for particular sub-groups with respect to whom the original reason for flight may have been attenuated,<sup>81</sup> is a matter of concern. Rwandan refugees continue to arrive in Uganda in considerable numbers to seek asylum. Further, in the context of reports that many recent applications for asylum from Rwanda may have been rejected,<sup>82</sup> there may be genuine questions from the refugee population about the viability of post cessation protection screening, an issue which must be tackled in order for the process to earn refugee confidence. It would be important that refugees see that the undertaking in the communiqué that the governments of Rwanda and Uganda will engage in a “verification” of the allegations made by asylum seekers and returnees—the first and very welcome direct reference to the ongoing concerns of refugees in a communiqué from the Tripartite Commission—be conducted in a transparent and thorough manner. It is clear from the research that considerable political tensions exist in Rwanda. As the country approaches its next national elections in August 2010 it should be expected that asylum seekers will continue to arrive, as they have increasingly done during the first half of 2010.

Finally it is understood that there is a significant group of asylum seekers whose applications for asylum have been rejected. Further to the communiqué this group will, by the end of June, be subject to the imposition of “bilateral measures” to ensure their return. Although the return of rejected asylum seekers is a prerogative of states, both the circumstances surrounding the return, and the consequences of such return, must be considered not only in terms of obligations under refugee law but also in terms of constitutional and other international law obligations including those set out in the ACHPR, in particular Articles 5 and 12. In particular in terms of adhering to both the Charter and Ugandan administrative law requirements, it is essential that Rwandan asylum seekers continue to have access to fair and independent individual status determination which takes into account the current political realities in Rwanda and includes access to an appropriate independent appeal process as determined by the Ugandan Refugees Act.

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<sup>79</sup> Refugee Law Project, *Press Release on Rwandese Repatriation*, [http://www.refugeelawproject.org/press\\_releases/rwandan\\_repatriation.pdf](http://www.refugeelawproject.org/press_releases/rwandan_repatriation.pdf) (Accessed 24 February 2010).

<sup>80</sup> See Joint Communiqué of the 8<sup>th</sup> Tripartite Commission Meeting, 13 May 2010, on file with authors.

<sup>81</sup> It should be noted that consideration of cessation for sub-groups of the population is the approach which it is understood has been suggested in discussions around UNHCR’s comprehensive strategy for Rwandan refugees more broadly in the region.

<sup>82</sup> On May 16<sup>th</sup>, APA reported, for example, that “[o]ver 1,312 Rwandan refugees fled to Uganda between April and March this year, claiming political persecution. The refugees, most of whom hail from the Eastern Province, were however denied refugee status” See APA, May 16<sup>th</sup>, 2010, available at <http://www.afriqueavenir.org/en/2010/05/16/over-one-million-rwandan-refugees-face-forced-repatriation-from-uganda/>.

The forced repatriation of any refugee from Uganda who continues to fear persecution upon return to Rwanda involves a contravention of a variety of provisions of the UN and OAU Refugee Conventions.<sup>83</sup> In recognition of this fundamental principle, Article 2 of the July 2003 Tripartite Agreement states that the Contracting Parties “fully recognise the essentially voluntary character of the solution of voluntary repatriation [...] no Rwandan refugee will be compelled to return against his or her will.”<sup>84</sup> In its substance, as noted above, the Tripartite Agreement appears to have been drafted with the rights of refugees in mind. Its implementation – including frequent review of the situation of these refugees,<sup>85</sup> the imposition of deadlines for return<sup>86</sup> and the restrictive conditions in the camps, set against the background of the questionable human rights situation or “circumstances” in Rwanda – may have set the stage for contravention of the Convention and the Uganda Refugees Act through constructive *refoulement*.<sup>87</sup> As noted above, the joint communiqué of July 2009 highlights this reality: it notes that a deadline for repatriation has been set, declares a ban on cultivating any new land and implies that the situation in Rwanda is now conducive to return. Combined, these factors seriously call into question the voluntariness of repatriation.

It is not only these external factors, however, that present return as the only viable option. This particular refugee population’s experience of efforts to push them back to Rwanda – leading to secondary flight for many – must also have an impact on how refugees interpret the implications of the political and legal context for their decision making. Rwandan refugees in Uganda are particularly sensitive to the rhetoric of government officials who are charged with mobilising refugees to return with the threat of forceful state action. As a result, undertakings to protect such as those set out in the April 2009 communiqué that the government of Uganda and UNHCR are committed to finding “a durable solution in case of a residual caseload” tends not to be taken seriously: it is assumed that forced repatriation is the intention. Against the background of severe restrictions on refugee livelihoods, and the rejection of newly arrived asylum seekers, the fact that there will be a process for “verifying and ascertaining the voluntary character of each refugee’s decision to repatriate”<sup>88</sup> similarly holds out little comfort.

Another element of the legal framework which must be taken into account in this context is the requirement under international refugee law and international humanitarian law that persons with respect to whom there are serious reasons for considering that they have committed international crimes, and those who are intent on engaging in armed activity or pose a threat to the security of the state (in certain circumstances), must be separated out from the refugee population. One of the major questions which has hovered over the *bona fide* refugee population in Uganda and elsewhere in the region is the extent to which those who are reluctant to return home refuse to do so because they are afraid of being held accountable for crimes committed during the 1994 genocide (such as genocide, crimes against humanity and war crimes). Although such persons continue, of course, to enjoy basic human rights protections, they cannot benefit from the protections due to refugees further to the exclusion clauses set out in the UN and OAU Refugee Conventions.<sup>89</sup> In addition, under the law of armed conflict if state wish to preserve their neutrality, they must separate combatants and armed actors from the civilian and refugee population.<sup>90</sup>

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<sup>83</sup> The 1969 OAU Convention, for example, is explicit about the requirement of voluntariness in the context of repatriation. (Art. V(1).)

<sup>84</sup> Involuntary return of refugees can also amount to a violation of the principle of the *jus cogens* principle of non-*refoulement* which prohibits states from “expelling or returning a refugee to the frontiers of territories where he or she would be exposed to persecution”. (Article 33, 1951 Refugee Convention.) Non-*refoulement* can occur as a result of *direct* action by a state or as a result of indirect measures, such as cuts in food rations, anti-refugee rhetoric, harassment by the local administration etc, which leave refugees with little choice but to repatriate.

<sup>85</sup> As evidenced by previous attempts to repatriate Rwandan refugees and previous declared repatriation deadlines. The UNHCR Handbook notes that, “[a] refugee’s status should not in principle be subject to frequent review to the detriment of his sense of security, which international protection is intended to provide.”

<sup>86</sup> The Pinheiro Principles provide that the right to voluntary return to places of former abode should not “be subject to arbitrary or unlawful time limitations.” See Pinheiro Principle 10.2, The Right to Voluntary Return in Safety and Dignity.

<sup>87</sup> UNHCR, 1992. “UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees.” Paragraph 135, 1 January 1992.

<sup>88</sup> Article 5, clause 1 Tripartite Agreement.

<sup>89</sup> The clauses governing exclusion can be found in the 1951 U.N. Convention, article 1F and the 1969 OAU Convention, article I(5).

<sup>90</sup> See Fifth Hague Convention (Convention V) respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, 3 Marten Nouveau Recueil (ser. 3) 504, 205 Consol. T.S. 299, entered into force Jan. 26, 1910) and the Third Geneva Convention, arts. 4B(2) and 21.

During the major outflows of Rwandan refugees since 1994, however, refugee status tended to be recognised through group determinations rather than through individual case examinations: in other words, the question of whether or not particular persons were excludable from protection due to the likelihood that they had committed serious crimes was little explored – or too late – although specialised screenings were carried out in some places.<sup>91</sup> In the absence of such screening, refugee return became tainted with the allegation that sojourn outside Rwanda equates with culpability or violent intent towards the post genocide government. For instance in Uganda in 2002, when the number of Rwandans arriving in the refugee settlements began to grow, there were suspicions that the rise in the population might have been related to the fact that Tanzanian authorities had commenced an exclusion screening procedure in early 2002.<sup>92</sup> No explicit screening, however, was carried out on the Ugandan side, adding to the environment of suspicion surrounding the identities of arriving Rwandans. In recent years, however, it should be noted that arriving Rwandan asylum seekers have been subjected to an individualised determination procedure which has included consideration of exclusion.

## *Methodology*

Field research took place in Uganda's Nakivale refugee settlement from 16 – 29 November 2009. Nakivale, located in Isingiro district in the southwest, was originally established in 1960 to accommodate Tutsis fleeing Rwanda in the aftermath of independence. After the genocide and the victory of the RPF, however, the demographics of the settlement drastically changed as the Tutsi refugees largely repatriated and were replaced by newly displaced Hutus.<sup>93</sup> The largest influx of Rwandan Hutu refugees to Nakivale occurred between 1998 and 2002 and did not come directly from Rwanda, but from Tanzania, where they had previously lived.<sup>94</sup> Many of this group settled in an area on the outskirts of the camp, known as Kibati, and have been the subject of considerable controversy, not least as a result of the government of Uganda's initial refusal to allow for individual screening on the basis of the alleged secondary movement.<sup>95</sup> Additional Rwandan asylum seekers have since arrived in the settlement, with a current total of approximately 20,000 Rwandan refugees based on local assessments. It should be noted that the official figure for recognised Rwandan refugees in Uganda is 12,807 as of 31st March 2010. The settlement is currently being used primarily to accommodate Congolese refugees fleeing the recent fighting in eastern Democratic Republic of Congo's North Kivu. It is important to note that conditions generally in the camp are chronically poor. In fact, the situation in both Nakivale and Kyaka II camps, as well as more generally for refugees living in southwestern Uganda, was recently described as a "silent emergency" by the UNHCR Deputy Representative in Uganda, with ongoing displacement from fighting in DRC putting enormous pressure on resources.<sup>96</sup>

During the course of the field research, 102 qualitative interviews were conducted with refugees (25 of whom were women), government representatives and NGO and UN officials. In order to incorporate the views of different categories of refugees, interviews took place in seven different villages within the settlement. Interviewees were selected through a simple snowballing technique, and were conducted in Swahili or French. There was a wide spread of ages among interviewees, although 75 of those interviewed were under the age of 40. Of those interviewed, approximately a quarter had been displaced to Uganda for the first time during the past five years – in other words, they had not previously been displaced from Rwanda, and therefore had not fled in the aftermath of the genocide. The remaining three quarters of those interviewed had been displaced more than once: they had tried to return to Rwanda (many from Tanzania, and significant numbers from DRC, Burundi and Uganda) but had once again fled. Of

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<sup>91</sup> For a fuller account of the screening conducted for the Rwandan caseload see Human Rights First, *Refugees, Rebels and the Quest for Justice*, (2002)

<sup>92</sup> IRIN, "Rwanda-Tanzania: Security Concerns for Rwandan Refugees," January 23, 2002.

<sup>93</sup> E. Bagenda, A. Naggaga, 2003, "Land Problems in Nakivale Settlement and the Implications for Refugee Protection in Uganda." Refugee Law Project Working Paper 8, May. p. 7.

<sup>94</sup> Ibid.

<sup>95</sup> For an in depth critique of the context surrounding this group of refugees, see Human Rights First, 2004.

<sup>96</sup> IRIN, "DRC-Uganda: Aid workers battle to help "forgotten" refugees." 10 March 2010. <http://www.irinnews.org/Report.aspx?ReportId=88379>.

this group, almost a half had previously been in Uganda. Only one interviewee had been displaced in Uganda continuously since the 1994 genocide.

At the end of the field research, a debriefing meeting was held with the Refugee Desk Officer (RDO) to outline some of the key findings and receive feedback. Throughout, a strong emphasis was placed on ensuring the confidentiality of the interviewees: interviews were held in private and all responses were recorded anonymously. In addition, names of people and places have been removed or changed in the presentation of the findings in order to protect the identities of those who participated in this study.

It is important to note for the purposes of this paper that, given the demographics of the Rwandan refugee population, the vast majority of those interviewed were Hutu – and, by definition, are refusing to return to Rwanda. It is likely, therefore, that they would be among the most vocal opponents of the current government. As a result, and within the context of this fraught debate, there is an inevitable bias within the data. However, while acknowledging this bias, it is important to emphasise that the situation of this group of refugees as a whole (Hutus, Tutsis and those of mixed origin, many only recently fled from Rwanda) presents considerable evidence of ongoing repression in Rwanda when viewed in terms of the basic facts surrounding their exile, the detail and credibility of the testimonies given, reflected in light of the available independent expert assessments of the situation in Rwanda. Generally, the ongoing presence of refugees must be read as an indicator of the general ill health of governance in a country of origin. Thus, regardless of any potential bias, this paper is about giving a voice to Rwandan refugees who continue to live in exile and are unable to exercise their rights as citizens. The fact that the vast majority – although certainly not all – of refugees are Hutu is only part of the story, and their opinions are a critical component of broader discussions regarding the long-term stability and potential of Rwanda – and, indeed, the region. Ultimately, these refugees form a significant group with whom the government needs to reconcile.

The findings are presented through a description of the current situation for the refugees in Nakivale; an overview of the main factors that are preventing refugees from returning to Rwanda; an analysis of the current situation in Rwanda in the light of these factors; and a reflection of what the findings mean with regards to the potential for this group of refugees to re-gain genuine citizenship in Rwanda.

## CURRENT SITUATION: UNDER PRESSURE TO REPATRIATE

The research shows that Rwandans are feeling under intense pressure to either repatriate or “disappear” within Uganda. Numerous push factors generated by the governments of Uganda and Rwanda – and, by association, by UNHCR – are compromising their general safety. Specifically, the fact that they are no longer allowed to cultivate is creating a situation of chronic food shortages that can only deteriorate further within the camp unless there is a change in policy towards assistance for this group.<sup>97</sup>

“The Rwandan Government is afraid of people abroad.”

*Refugee man, Nakivale,  
21 November 2009*

### *Government of Uganda and UNHCR: Creating Push Factors*

Despite assertions that the current repatriation exercise is voluntary, in reality strong push factors are being created that refugees interpret as amounting to force, force that they see as emanating from both the government of Uganda

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<sup>97</sup> For example, a recent IRIN report states that aid workers are concerned about an impending food crisis within the camp. “Rwanda-Uganda: Refugees face hunger as farming-ban bites.” IRIN, 18 March 2010. <http://www.irinnews.org/Report.aspx?ReportId=88472> (Accessed 3 April 2010). It is important to note that UNHCR has expressed concern over the reallocation of land. (Communication with UNHCR Uganda office, 24 June 2010)

and UNHCR. The pressures being felt and decried (such as the new policies on cultivation and the imposition of deadline) emanate officially from the government of Uganda. The reality, however, of UNHCR's close relationship with the state, its engagement in the refugee status determination procedure, and its presence on the Tripartite Commission, have resulted in the widespread perception that it is supportive of the policies, despite UNHCR's considerable behind the scenes advocacy around a range of protection issues from the appropriate timing of the imposition of the cessation to the question of access to land.

According to interviewees, those who had been cultivating within the settlement have been removed from their land,<sup>98</sup> and services offered by the Office of the Prime Minister (OPM) and UNHCR through its implementing partners have been officially withdrawn. Children are being turned away from school<sup>99</sup> and food rations have been halved to seven kilograms per month for those who have been in the settlement for more than four years – despite the fact that they have been stopped from cultivating.<sup>100</sup> As one woman said, “it is like it is forced because the NGOs and community workers have stopped working with us”;<sup>101</sup> “they say we're not being forced, but we are not well received in the offices or in the hospitals. We have been stopped from cultivating and we don't get any support for our children to go to secondary school anymore.”<sup>102</sup> As one man said, “Life here, I have never lived like this before. When it rains I have to stand up and we don't have access to work like the other people. I feel isolated. I can't do anything.”<sup>103</sup>

Furthermore, there was frequent reference to the fact that letters of appeal made to UNHCR protection officers had remained unanswered leaving refugees frustrated at the lack of communication – and their general lack of presence within the camp. As one refugee asked, “Does UNHCR really exist? I don't think so.”<sup>104</sup> Brief appearances by UNHCR at sensitisation meetings are seen as hugely inadequate by a group of refugees who have genuine protection concerns and feel that no-one is genuinely listening.<sup>105</sup>

The veneer of voluntariness has been further compromised by the language allegedly employed by the official authorities to persuade refugees to leave.<sup>106</sup> One refugee quoted the words of an OPM official at a sensitisation meeting: “[an OPM official] told us that all the Rwandan refugees have to be repatriated and whoever remains will be like a donkey passing through an eye of a needle.”<sup>107</sup> Others talked of similar threats: “There is someone ... from OPM who came and told us that we have to return to Rwanda. He said that ‘even if you go five meters under the soil we shall remove you!’”<sup>108</sup>

“I would rather commit suicide than return to Rwanda.”

*Refugee man, Nakivale,  
26 November 2009*

Previous experiences of forced repatriation mean that few trust what the government is telling them, and people are convinced that ultimately they will be returned by force. For some, it was the experience of being forced out of Tanzania in the late 1990s; for

<sup>98</sup> While it is commendable that the Government of Uganda offers land to refugees in the first place, it is also important to note that access to land is fully contingent upon refugees agreeing to live in confined settlements without freedom of movement. For a critique of this policy, see L. Hovil, “Self Settled Refugees in Uganda: An Alternative Approach to Displacement?” *Journal of Refugee Studies* 20: 599 – 620, 2007; and L. Hovil and M.C. Okello, “The right to freedom of movement for refugees in Uganda.” In David Hollenbach (Ed), *Refugee Rights: Ethics, Advocacy and Africa*. Georgetown University Press, Washington D.C. 2008.

<sup>99</sup> Interview with refugee man, Nakivale, 17 November 2009.

<sup>100</sup> New arrivals reportedly get 15 kgs. (Interview with refugee man, Nakivale, 24 November 2009). However, it should also be noted that, according to UNHCR, the reduction in rations is due to a more general shortage of food rather than a deliberate strategy against this group of refugees. (Communication with UNHCR Uganda office, 24 June 2010)

<sup>101</sup> Interview with refugee woman, Nakivale, 25 November 2009.

<sup>102</sup> Interview with refugee man, Nakivale, 18 November 2009.

<sup>103</sup> Interview with refugee man, Nakivale, 18 November 2009.

<sup>104</sup> Interview with refugee man, Nakivale, 19 November 2009.

<sup>105</sup> With respect to this perception, UNHCR has pointed out that it has availed its staff to the Rwandan refugee community on numerous occasions and has communicated refugee concerns to the relevant authorities based on in-depth engagement.

<sup>106</sup> It is important to note that UNHCR has expressed concerns over the viability of the deadlines set. (Communication with UNHCR Uganda office, 24 June 2010)

<sup>107</sup> Interview with refugee man, Nakivale, 17 November 2009.

<sup>108</sup> Interview with refugee man, Nakivale, 26 November 2009.

others it was coming under attack from the Rwandan army in the camps in eastern DRC; others had been forced out of Uganda in 2006. As one man said, “they told us that before the 31 July 2009, we had to return to Rwanda. People were afraid. We remembered Kabahinde and Kibati. And we remembered the forceful repatriation from Tanzania when a lot of people were hurt – some were decapitated and others were killed in road accidents.”<sup>109</sup> The current initiative is seen as a continuation of similar exercises: “I think this repatriation is forced. I remember what happened in Tanzania, Congo, Burundi. I remember what happened in Kibati in 2006. Those who want to go back, they can. You don’t need a UNHCR convoy for that.”<sup>110</sup>

As a result, Rwandan refugees in Nakivale – and elsewhere – are living in constant fear and uncertainty – worried that they might one day, or night, be forcibly taken back. People reported sleeping outside their houses in case the government should come for them in the night and force them on to trucks, and have moved their belongings into neighbouring villages: “we are afraid that the governments of Rwanda and Uganda are going to capture and repatriate all of us by force.”<sup>111</sup> As one man said, “I was feeling very secure here until that threat of returning us to Rwanda by force.”<sup>112</sup> Others said that they had repatriated in July but had returned, leaving them even more vulnerable: even the few belongings they had when they returned have now been lost.<sup>113</sup>

### ***Rwanda: Strongly Promoting Repatriation***

In addition to the persuasive powers of the government of Uganda, under the auspices of the Tripartite Commission, government of Rwanda officials have also visited settlements in Uganda trying to persuade refugees to return. Many interviewees talked of a sensitisation meeting that was held with representatives from the government of Rwanda:

They told us that we should return to Rwanda because there is no war, there is a good economy, and good governance... During the meeting we asked them some questions. People asked if there would be fields to cultivate and the representative from government of Rwanda said that there would be fields for everyone. Then someone asked what about those who are captured, set free, and then captured again. The representative [Rwandan government] said that he didn’t know this was happening. Then a third question was asked, but it was not answered, ‘it is said that there was genocide. That is true, but what has happened about the people you have killed?’<sup>114</sup>

Indeed, there was a clear perception that the government’s motivation for persuading them to return was primarily to promote Rwanda’s international image. Numerous interviewees talked of the government of Rwanda’s aggressive pursuit of repatriation, which they saw as being motivated by the desire “to mistake the international community that Rwanda is now ok.”<sup>115</sup>

However, the government of Rwanda’s powers of persuasion are somewhat compromised by the fact that people do not believe the promises being made. Refugees are profoundly suspicious of the government’s motives in wanting them to return, exacerbated by the fact that there are allegedly Rwandan government spies within the camps. “Even before [the Rwandan government] started its campaign of making us go back, it sent its intelligence among the Banyamulenge to make them put pressure on us to return... The people who just want to lure us back are agents of the government of Rwanda.”<sup>116</sup> There was reference to the fact that some UNHCR staff from Rwanda were recognised as people who had witnessed against them or their relatives in *gacaca* courts. In addition, a Rwandan official who was part of the group of government representatives who came to the settlement to “motivate” them to go

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<sup>109</sup> Interview with refugee man, Nakivale, 17 November 2009.

<sup>110</sup> Interview with refugee man, Nakivale, 18 November 2009.

<sup>111</sup> Interview with refugee man, Nakivale, 26 November 2009.

<sup>112</sup> Interview with refugee man, Nakivale, 19 November 2009.

<sup>113</sup> Interview with refugee man, Nakivale, 21 November 2009.

<sup>114</sup> Interview with refugee woman, Nakivale, 25 November 2009.

<sup>115</sup> Interview with refugee man, Nakivale, 19 November 2009.

<sup>116</sup> Interview with refugee man, Nakivale, 17 November 2009.

back to Rwanda, was alleged by one refugee to have been the person who had thrown him into a pit latrine in 1996.<sup>117</sup>

Direct experience of previous efforts to return has shown some of the refugees what they should expect when they return. As one refugee said:

When it seemed like there was peace in 1996 we returned. But we found there were silent killings. Someone can come and call you and then you just disappear. In most cases they come in civilian clothes but they were part of government. And the people being targeted were all Hutu who are either educated or wealthy.<sup>118</sup>

When asked if this is still going on, he replied:

You can stay with people, talk with them and laugh with them during the day, but in the night people disappear and you get stories of someone who is dead. And it is always people who are Hutu... So from what I saw and hear, there is no peace there. The conventional war is over, but now there is witch-hunting. It is a war on individuals, and many of us are here because of that.<sup>119</sup>

This particular respondent had twice tried to return, and had terrible physical scars which he told the researchers were the result of attacks related to his efforts to go “home”.

People also rely on the testimonies of those who have recently tried to repatriate, but have once again fled.<sup>120</sup> Despite the poor living conditions in which they now find themselves, those who were interviewed were adamant that they still would not return to Rwanda, and several said they would commit suicide rather than return: “now we are living under the threat of forced repatriation, because none of us here want to go back... But I say that you can kill me if you want but I am not going back to Rwanda.”<sup>121</sup> Instead, refugees are being forced to hide their identities and change their names<sup>122</sup> – some pretending to be Congolese refugees and others identifying themselves as Munyankole, a Ugandan ethnic group.<sup>123</sup> The fact that many speak Runyankole, the dialect of that group, enables them to become “Ugandan”: “people who I do not know and who are in civilian clothes, I cannot tell them I’m a refugee from Rwanda. I tell them I am Munyankole because I can speak that language. Or else I tell them I am Congolese... And those that I have told that I am a refugee from Rwanda, I will not mention that I am a Hutu.”<sup>124</sup> Many are now seeking casual labour with Ugandans who live near to the settlement in order to supplement their livelihoods.

The governments of Rwanda and Uganda, as well as UNHCR, are all desperately pushing for the refugees to return to Rwanda. As the findings show, there appears to be an assumption that if life is made miserable enough, refugees will finally succumb and return to Rwanda. The combined strength of the effort, however, is seriously jeopardising the protection of this group of refugees. With no alternatives being offered, it is clear that cessation, while not formally declared, is being informally applied in practice.

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<sup>117</sup> Interview with refugee man, Nakivale, 17 November 2009.

<sup>118</sup> Interview with refugee man, Nakivale, 19 November 2009.

<sup>119</sup> Interview with refugee man, Nakivale, 19 November 2009.

<sup>120</sup> Interview with young refugee woman, Nakivale, 19 November 2009.

<sup>121</sup> Interview with refugee man, Nakivale, 25 November 2009.

<sup>122</sup> Interview with refugee woman, Nakivale, 27 November 2009.

<sup>123</sup> Interview with refugee man, Nakivale, 17 November 2009.

<sup>124</sup> Interview with refugee man, Nakivale, 17 November 2009.

## WHY SO RELUCTANT TO RETURN?

Given these push factors, why are these refugees so reluctant to return home? The interviews point to a number of inter-related issues: of *gacaca* courts that are seen as unfair; of the association of all Hutu with the genocide; of previous repatriation experiences that had horrific consequences for themselves and family members; and of land that they could not reclaim. These different factors are discussed in turn.

“To return to Rwanda is like putting one’s hand in a hole with a snake.”

Refugee man, Nakivale,  
26 November 2009

### *Gacaca*

Inevitably, one of the greatest challenges in Rwanda has been the question of how to promote justice in the aftermath of mass atrocity. With the end of the genocide, Rwanda’s prisons were soon chronically overcrowded with hundreds of thousands of alleged *génocidaires* – ten times more than the capacity of prison facilities. With the country’s regular courts crippled by the genocide – the majority of the country’s lawyers and judges had been killed – and unable to process even a small portion of cases within any reasonable time, radical solutions had to be sought.

“I think the *gacaca* is to finish the Hutu slowly by slowly.”

Refugee man, Nakivale,  
17 November 2009

A relatively small number of cases have been tried by the International Criminal Tribunal for Rwanda (ICTR) established in November 1994 by the United Nations Security Council (UNSC)<sup>125</sup> to investigate and prosecute those alleged to have committed genocide, crimes against humanity, and war crimes.<sup>126</sup>

This court, however, was only ever supposed to have the capacity to try an extremely limited number of individuals. In addition, there has been considerable debate and controversy regarding the efficacy of the court.<sup>127</sup> In particular, owing to the long distance between the courts’ seat in Arusha and Rwanda, it has been argued the justice meted out by the court has had limited impact on perceptions of post-genocide justice within Rwanda: justice might technically have been served, but it is not being *seen* to be done by the majority of ordinary Rwandan citizens who bore the brunt of the genocide and its aftermath.<sup>128</sup> Moreover, soon after its establishment, the court was embroiled in bureaucratic and security challenges and found itself hosting a huge backlog of cases, in relative terms. It has also faced criticisms of political bias from independent commentators and the government of Rwanda, and to date has not brought any RPF official to trial although investigations have been conducted and cases transferred to Rwanda.<sup>129</sup>

As a result, the majority of those suspected of participating in the genocide have been tried either in the national courts or, more commonly, in the community *gacaca* courts. *Gacaca* courts are based on traditional informal people’s dispute resolution mechanisms, and their name derived from the grass on which communities used to sit on to resolve their disputes. The courts were given increased recognition and mandate in order to process the thousands

<sup>125</sup> United Nations Security Council, Resolution No 955, S/RES/955 (1994), Adopted by the Security Council at its 3453rd meeting, on 8 November 1994.

<sup>126</sup> A minority of those considered to have been most responsible for masterminding the genocide have since been arrested, tried, convicted and are serving sentences (23); are at different stages of appealing their cases (10); are under detention awaiting trial (2) at the ICTR; have been tried and acquitted (8); or have been released having completed their sentence (9). ICTR Factsheet, 2010. “Detainees: Status on 25 February 2010.” <http://www.ictj.org/ENGLISH/factsheets/detainee.htm>. In total, 81 individuals have so far been arrested and detained by the court, which is expected to continue operating until 2013. [http://www.ictj.org/static/Prosecutions/ICTJ\\_ResidIssues\\_2010rp\\_Final.pdf](http://www.ictj.org/static/Prosecutions/ICTJ_ResidIssues_2010rp_Final.pdf) (Accessed 7 April 2010)

<sup>127</sup> See, for instance, Amnesty International, 2004. “Rwanda: The Enduring Legacy of the Genocide and War.” 5<sup>th</sup> April.

<http://www.amnesty.org/en/library/asset/AFR47/008/2004/en/285043da-d5f7-11dd-bb24-1fb85fe8fa05/af470082004en.pdf>

<sup>128</sup> See, for example, A. Tiemessen. 2004. “After Arusha: Gacaca Justice in Post-Genocide Rwanda,” African Studies Quarterly, Volume 8, Issue 1, Fall.

<sup>129</sup> Human Rights Watch 2010, for instance, recently warned that the legacy of the ICTR could be jeopardised by its failure to bring charges against the RPF. . “Genocide, War Crimes, and Crimes Against Humanity”, 15 January. ( <http://www.hrw.org/en/reports/2010/01/12/genocide-war-crimes-and-crimes-against-humanity> accessed 10 May 2010.)

of cases against those accused of participating in the genocide despite the fact that the system had traditionally been used for much less serious crimes.<sup>130</sup> Judges are supposed to be selected by the local community (although, as demonstrated below, the interviews indicate this not to be the case), and confessions, which are accompanied by the names of other participants and an apology, receive reduced punishment.<sup>131</sup> After the proceeding, reparations are given to the victims in the form of an official statement used to make claims from a public fund.<sup>132</sup> Founded on “the principal that the community should reintegrate the individuals whom it punishes,”<sup>133</sup> *gacaca* is supposed to break down the increased polarisation between Hutu and Tutsi that has been generated by those in power.<sup>134</sup>

However, commentators have grown increasingly sceptical of the way in which the courts are operating in practice. In particular, it has been argued that the Rwandan government, responsible for overseeing the operation of *gacaca*, has weakened the system: “its policies in other areas undermine the people’s confidence in an institution that depends on the community’s trust and active participation.”<sup>135</sup> With no corresponding political openness and freedom of expression, *gacaca* is hampered by an environment of political restriction. As a result, it has been argued that *gacaca* has become “no longer [a] community-based conflict-resolution mechanism, but part of a centrally-organised state initiative-put the investigative power of the state at the service of the prosecution while prohibiting legal assistance for the accused.”<sup>136</sup>

The lack of transparency and honesty in the environment within which the *gacaca* courts function is further exacerbated by the criminalisation of uses of the labels “Hutu” and “Tutsi” more broadly in Rwandan political life:<sup>137</sup> in 2002 two new crimes of incitement to *irondamoko* (“ethnicism” or discrimination) and *amacakubiri* (“divisionism”) were introduced sanctioned by heavy prison penalties and fines.<sup>138</sup> Although the intention to protect against hate speech is laudable, the broad manner in which the offences are described and in which they are applied in practice have the effect of stifling debate over issues of ethnicity and its role in generating violence: “if Rwandans cannot freely discuss the ways in which leaders throughout the twentieth century manipulated ethnic labels to violent ends, they will fail to address the root causes of their conflicts, rendering reconciliation little more than a pipe dream.”<sup>139</sup> A new law passed in 2008 has further compounded the impact of the *de facto* “ban” on references to ethnic distinction with the creation of the crime of expression or promotion of “genocide ideology”.<sup>140</sup> Finally, there has been

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<sup>130</sup> Rwandan law defines three levels of crimes regarding the genocide: masterminding the genocide (1<sup>st</sup> category), which are forwarded to the Public Prosecution to be tried in domestic courts; killing and assault (2<sup>nd</sup> category), which are forwarded to the *gacaca* courts of the sector; and crimes against property (3<sup>rd</sup> category), which are to be adjudicated in cell level courts. B. Oomen, 2006. “Rwanda’s *Gacaca*: Objectives, Merits and Their Relation to Supranational Criminal Law.” In *Sentencing and Sanctioning in Supranational Criminal Law*, edited by R. Haveman and O. Olusanya. Antwerp-Oxford: Intersentia, 164-181.

<sup>131</sup> Peter Uvin, 2002. “The *Gacaca* Tribunals in Rwanda,” Summer.

[http://www.idea.int/publications/reconciliation/upload/reconciliation\\_chap07cs-rwanda.pdf](http://www.idea.int/publications/reconciliation/upload/reconciliation_chap07cs-rwanda.pdf) (accessed 15 November 2009)

<sup>132</sup> *Ibid.*

<sup>133</sup> P. Clark, 2005. “When the Killers Go Home: Local Justice in Rwanda.” *Politics Abroad*, p. 14 – 21, Summer, p. 14.

<sup>134</sup> *Ibid.*

<sup>135</sup> *Ibid.*, p. 21.

<sup>136</sup> See, for example, K. Roth and A. Des Forges, 2002. “Justice or Therapy?” Human Rights Watch. 31 July. <http://www.hrw.org/en/news/2002/07/31/justice-or-therapy> <http://www.hrw.org/en/news/2002/07/31/justice-or-therapy> (Accessed 10 May 2010).

<sup>137</sup> The government’s approach to dealing with ethnicity lies in sharp contrast to neighbouring Burundi, which actively encourages open discussion and debate. (IRRI and SSRIC 2009)

<sup>138</sup> Law No 47/2001 of 18/12/2001. The law punishes any speech or action considered to promote discrimination or sectarianism. Sectarianism is defined in part as “the use of speech, written statement or action that divides people...” According to Amnesty International, “The “divisionist” allegation, frequently employed by the government but rarely pursued in the courts, is clearly nonspecific and open to interpretation and abuse. It violates the rights to freedom of expression and association as enshrined in the International Covenant on Civil and Political Rights, and the African Charter on Human and Peoples’ Rights, to which Rwanda is party. Amnesty International, 2004. “Rwanda: The Enduring Legacy of the Genocide and War.” 5<sup>th</sup> April. (<http://www.amnesty.org/en/library/asset/AFR47/008/2004/en/285043da-d5f7-11dd-bb24-1fb85fe8fa05/af470082004en.pdf> Accessed 13 May 2010)

<sup>139</sup> P. Clark, 2005. “When the Killers Go Home: Local Justice in Rwanda.” *Politics Abroad*, p. 14 – 21, Summer, p. 21.

<sup>140</sup> Although “genocide ideology” is a term that has been used loosely since 2003 in Rwanda – referring to various forms of conduct referred to in the country’s 2003 Constitution – it officially became a specific crime in a law adopted in June 2008. Human Rights Watch, 2008. “Law and Reality: Progress in Judicial Reform in Rwanda.” 24 July. (<http://www.hrw.org/en/node/62097/section/8> Accessed 12 May 2010).

widespread criticism that the *gacaca* process lacks safeguards.<sup>141</sup> Not surprisingly, therefore, fear of *gacaca* has been continually cited as a major barrier to return.<sup>142</sup>

As the current research clearly demonstrates, rather than a tool for promoting justice, the *gacaca* courts were seen by interviewees to target only Hutus; to be a tool for people who want to take revenge or gain access to property; and as an arm of a repressive government. Interviewees repeatedly described how *gacaca* has metamorphosed from a community-based justice system into a political mechanism for state control. As one refugee said:

*Gacaca* was a grassroots thing. But when the RPF came, it took over these community courts and planted their own people. Our *gacaca* which was more informal used to fine people or pass light punishments just to correct community members, but the *gacaca* courts of today started passing sentences such as jailing for 30 years in a gazetted prison. There is no room for appeal... and the courts are just ruled by the personal hate and envy of the community leaders. Anyone who is doing well, or who has their own ideas, is just eliminated this way.<sup>143</sup>

Of primary concern was the fact that the *gacaca* courts, as currently configured, are seen to be dominated by Tutsis, and to only try Hutus. "It is only aimed at Hutus. If the Tutsis were also subjected to it, it would be good. The problem is not the *idea* of *gacaca*, but the practice by the people who are supposed to implement it."<sup>144</sup> *Gacaca* is seen to represent one-sided justice – or victor's justice – in which all Hutus are considered guilty or potentially guilty, and all Tutsis innocent victims: "*gacaca* is biased. It is targeting people who are ruled but those in government who committed crimes are not touched by it."<sup>145</sup> The numbers passing through *gacaca* seem to reinforce concerns about collective guilt. According to the government of Rwanda's National Services of *Gacaca* Courts, over one million cases have been received and processed by the courts.<sup>146</sup> Given Rwanda's population and ethnic and gender distribution, it is likely that this number constitutes a huge proportion of the total number of able bodied Hutu men.

Furthermore, not only is *gacaca* seen to be targeting Hutus, but several informants talked of how they are unable to access the courts themselves if the accused is Tutsi. For instance one man told of how he has been trying to pursue justice for the death of his brother: "during the war my brother was killed. So when I went to *gacaca*, I raised the issue of my dead brother. But I was told that my brother didn't belong to the tribe that was killed so I needed to keep quiet."<sup>147</sup> "If two people fight, it doesn't help to punish only one. This is what happens [with *gacaca*]. Only Hutus are punished."<sup>148</sup>

At the same time, there was repeated reference to the fact that the *gacaca* courts are a convenient means of settling vendettas or of getting someone else's property: "one can be innocent and they just sue the *gacaca* courts to eliminate you... These courts are prepared by [the government of Rwanda] for their purpose."<sup>149</sup> There were frequent stories of the *gacaca* courts being used to settle personal differences – "for example, if you quarrel with someone on other things, this person will go to *gacaca* and allege that he saw you participate in killing a certain family. The person will be an eye witness and without further verification you are convicted."<sup>150</sup> With inadequate procedural safeguards in place and the overtly politicised functioning of the courts, people are living under constant threat of being falsely accused.

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<sup>141</sup> Roth and Des Forges, 2002.

<sup>142</sup> See, for instance, Human Rights First, 2004, p. 29.

<sup>143</sup> Interview with refugee man, Nakivale, 17 November 2009.

<sup>144</sup> Interview with refugee man, Nakivale, 25 November 2009.

<sup>145</sup> Interview with refugee man, Nakivale, 22 November 2009.

<sup>146</sup> Cited in "The Periodic Report of the Republic of Rwanda to the African Commission on Human and Peoples' Rights," 12-26 May 2010.

<sup>147</sup> Interview with young refugee man, Nakivale, 21 November 2009.

<sup>148</sup> Interview with refugee man, Nakivale, 17 November 2009.

<sup>149</sup> Interview with refugee man, Nakivale, 17 November 2009.

<sup>150</sup> Interview with refugee man, Nakivale, 21 November 2009.

The process itself – with no appeal process and considerable references to corruption within the courts – was constantly criticised. Two interviewees talked of how they had been on local *gacaca* committees but had had to flee because they refused to wrongly convict people. One of them had fled to Uganda in 2006 for the first time as a consequence: “the *gacaca* courts now are influenced by people in government who normally have secret meetings to decide people’s fate before the court sits.”<sup>151</sup> Another referred to the fact that if the court cannot find someone to testify, they give a prisoner food in exchange for testifying.<sup>152</sup>

Most importantly, the courts were seen as a facade: “the intention of *gacaca* was to deceive the world that they had a reconciliation mechanism in place. Yet it is a lie. It is instead being used to divide the people.”<sup>153</sup> As another refugee said:

...*gacaca* was a good idea before it became used for political issues. This genocide *gacaca* is doing something bad... It is a court composed of nine persons from the cells. Many are not educated – they are elected by the people but only through the influence of the RPF party. We have people who are called opinion leaders who dictate who can be in *gacaca* – they are the ones who nominate the nine people, and they are only Tutsi.<sup>154</sup>

The courts are therefore seen as a perversion of the justice they are supposed to represent. The courts are known to have been set up, essentially, to try Hutu *génocidaires*, and there was frequent reference to the fact that Tutsis are never tried in these courts – if they are suspected of committing a crime, they go to the national courts. As a result, there was a strong perception that Tutsis were using *gacaca* to legalise their actions against Hutus, assisted by the fact that the courts are apparently influenced by government members who allegedly hold secret meetings in which the verdicts of certain people are decided before the court sits. One respondent who had previously been a president of a *gacaca* court said that his verdicts that would free (Hutu) people from prison would often be over-ridden by higher placed (Tutsi) government officials.<sup>155</sup>

As a result, the courts have tended to divide and polarise communities: “when we were young we were told that [*gacaca*] would bring people together, reconciling two people who are warring. The current *gacaca* is instead dividing people because it is intended to focus on the Hutus only. The issue of saying that all people who come from Rwanda are Rwandans is overshadowed by the acts of *gacaca*.”<sup>156</sup>

The stakes involved in a finding of guilt, whether in the national courts or through the *gacaca* courts, are particularly high, both in terms of horrendous prison conditions and the severity of penalty which can be imposed: although Rwanda has abolished the death penalty it does retain punishments such as life imprisonment in solitary confinement. There were numerous stories told by refugees of the horrifying conditions they had experienced of Rwanda’s prisons – both immediately after the 1994 genocide, but also more recently. One man described how he was imprisoned in a small room with 98 other people: a number of people hanged themselves from the ceiling while others suffocated.<sup>157</sup> He went on to say that he has a bottle of insecticide under his bed that he will drink if he is forced to return to Rwanda. Another man had been in a prison designed for 1,500 people that was housing 28,000 where there was nothing to eat and people were beaten with sticks.<sup>158</sup> Of serious concern was the allegation made by a number of interviewees that, since 2008, people have not been allowed visitors in prison.<sup>159</sup> If family members

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<sup>151</sup> Interview with refugee man, Nakivale, 18 November 2009.

<sup>152</sup> Interview with refugee man, Nakivale, 19 November 2009.

<sup>153</sup> Interview with refugee woman, Nakivale, 28 November 2009.

<sup>154</sup> Interview with refugee man, Nakivale, 25 November 2009.

<sup>155</sup> Interview with refugee man, Nakivale, 18 November 2009.

<sup>156</sup> Interview with refugee man, Nakivale, 29 November 2009.

<sup>157</sup> Interview with refugee man, Nakivale, 22 November 2009.

<sup>158</sup> Interview with refugee man, Nakivale, 29 November 2009.

<sup>159</sup> This allegation is supported by the U.S. Department of State’s 2009 Human Rights Report on Rwanda. See <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135971.htm> (accessed 1 April 2010).

do attempt to visit, there were several stories of harassment.<sup>160</sup> Some reportedly starved to death. As one man alleged of his recent experience in prison, “even a child who was helping me by bringing me food in prison, a nephew, was taken and beaten to death.”<sup>161</sup>

Recently there has been discussion about ending the *gacaca* process, but despite anticipated closure in March 2010, it is unclear when the courts will in fact officially be closed. Some commentators have indicated that the process has already ended,<sup>162</sup> while others have indicated that it is in the final stages without giving a precise date.<sup>163</sup> Although it is clear that the suspension of the *gacaca* process would be positively viewed by refugees, it is important not to overestimate the impact of this. First, given suspicion of the process, and the government generally, refugees are unlikely to be swayed by mere discussion of closure. Second, although *gacaca* is feared, it is viewed as merely one tactic employed by a repressive government. Other mechanisms, as the following sections will show, are seen as equally potent instruments of oppression.

### *Ibuka: Remembering*

More feared than the *gacaca* process, however, was an organisation called Ibuka, which was referred to unprompted in all of the interviews when asked why people were refusing to return. Ibuka, which means “we should always remember” in Kinyarwanda, was officially formed in 1995 as an umbrella organisation for “survivor” organisations in Rwanda to address issues of justice, memory, and social and economic problems faced by survivors.<sup>164</sup> However, the organisation is seen as a government controlled mechanism aimed at keeping alive the notion of collective Hutu guilt. When asked what Ibuka is, one man said, “It is an association with absolutist power in Rwanda... What is decided by Ibuka is put into practice... even if someone is found innocent [by *gacaca*] Ibuka can change the verdict.”<sup>165</sup> It is seen as the authority that both controls and overrides the *gacaca* process: “If the *gacaca* judges don’t do exactly what Ibuka want, they are imprisoned because the Ibuka is like a branch of the RPF. Many people have been killed in prison in my country. In prison there are intellectuals who have never passed before judicial systems – neither *gacaca* nor the national courts.”<sup>166</sup>

One of the events organised by Ibuka is a week of remembrance that takes place in Rwanda from 7 – 14 April every year, commemorating the start of the genocide. However, according to those interviewed, only Tutsi deaths are remembered: “Ibuka is about remembering the Tutsi who died in that month [of April 1994]. It is only for Tutsi – the Hutus are not part of it. In April, when it is supposed to be Ibuka, people are supposed to mourn the Tutsis who died.”<sup>167</sup> “Even though both the Tutsi and Hutu have died in this war, now they portray that it is only the Tutsi who died.”<sup>168</sup> Others talked of the way in which the week reinforces notions of collective guilt: “...during that time Hutus don’t feel fine because they cannot speak. Sometimes there are activities like washing the bones – it is the Hutus who have to do that, not the Tutsis. People say that the bones were Tutsis. During that week we cannot work.

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<sup>160</sup> Interview with refugee man, Nakivale, 29 November 2009.

<sup>161</sup> Interview with refugee man, Nakivale, 27 November 2009.

<sup>162</sup> Edwin Musoni, “Rwanda: Senate Raises Concerns Over Gacaca Archives”. 30 March 2010, <http://allafrica.com/stories/201003310377.html>

<sup>163</sup> According to Denis Bikeshu, the Director of Training, Mobilisation and Sensitisation of the National Service of Gacaca Jurisdictions (NSGJ), proceedings, which were supposed to end in March 2010, will continue in April. He gave no new deadline for the end of all trials.

(“Rwanda/Gacaca – Gacaca closure postponed one more time.” 31 March 2010. <http://www.hirondellenews.com/content/view/13340/332/> (Accessed 7 April 2010)) Similarly, the report of the Government of Rwanda to the African Commission on Human and Peoples’ Rights in May 2010, makes reference to a 2008 statistic indicating that only about 4,000 cases remained at that time, indicating that the process should have limited remaining lifespan, but continues to refer to its processes and procedures in the present tense.

<sup>164</sup> See [www.ibuka.net](http://www.ibuka.net)

<sup>165</sup> Interview with refugee man, Nakivale, 24 November 2009.

<sup>166</sup> Interview with refugee man, Nakivale, 29 November 2009.

<sup>167</sup> Interview with refugee woman, Nakivale, 28 November 2009.

<sup>168</sup> Interview with refugee woman, Nakivale, 20 November 2009.

Everyone is obliged to participate.”<sup>169</sup> “When the time comes for displaying the bones of the dead, they claim that the skulls are all of Tutsi – even though those of Hutu are there. This is to get sympathy.”<sup>170</sup>

While memorials are an important part of any recovery and reconstruction process in the aftermath of mass atrocity, it needs to be done in such a way as to heal and prevent the same thing from happening again – not by promoting division and injustice. This type of remembering is more akin to an open wound that is slowly going septic. Furthermore, the overtly ethnic dissection of the genocide is particularly deceptive in a context in which discussion of ethnicity can attract criminal penalty. Not surprisingly, therefore, when asked what changes would need to take place in Rwanda to enable him to return, one young man said:

there is need to re-organise the *gacaca* courts so that they bring justice for both sides. Then there should be land reform so that people returning should go back to their land. And then there is the organisation, Ibuka... which was set up for the remembrance of the dead who are Tutsi. It encourages divisionism and emotions, opening up wounds. Yet both tribes [Hutu and Tutsi] have lost people... So there is a need to change of attitude towards Hutu. This is because the Tutsi see the Hutus as criminals and crimes committed by the Tutsi are not punished. If both were treated equally, then it would be possible to return.<sup>171</sup>

### *Anti-Hutu Stereotypes*

Explicit throughout this discussion is the assertion of collective Hutu guilt. While the majority of those interviewed for the research identified themselves as Hutu, and that in this regard there is therefore a bias in the data, there has been ample independent research documenting the same trend. Although all the accounts the researchers heard are allegations, the immense detail and commonality of experience noted suggest that these allegations spring from encounters with real repression and control exerted by the government. Indeed, numerous informants talked of how the myth of collective Hutu guilt was being promulgated from the top: “Kagame does bad things in the way he talks about Hutus. He says every Hutu is guilty of having committed genocide. He only thinks of Tutsis as Rwandans. This is what he says to the Tutsis, ‘these people have killed our people, but don’t worry because we will handle them.’”<sup>172</sup> Collective guilt, in turn, has been used as an excuse for collective punishment. Another man talked of how “children are now being taught that the Hutus are bad. One time Kagame himself was saying that even a drum full of water can be emptied by scooping it with spoons slowly but surely. This was meant to imply that the Hutus will eventually be finished.”<sup>173</sup>

Several informants talked of how this logic was being applied in the *gacaca* courts, which have allegedly convicted people for crimes committed by their fathers who have since died.<sup>174</sup> One young woman who was only 10 at the time of the genocide said, “I am not willing to go back to Rwanda because my parents are wanted back in Rwanda. I cannot go there because they see me in the same measure of my parents.”<sup>175</sup> She later talked about how they convict you *in absentia* “so you cannot even defend yourself when you go back.”<sup>176</sup> Although the lack of comprehensive monitoring of the *gacaca* process on the Rwandan side makes it difficult to assess fully the objective basis of such fears, UNHCR in Rwanda acknowledged that it had monitored at least one such case, in which a returnee woman was made to pay compensation for cattle allegedly raided by her son during the genocide.<sup>177</sup>

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<sup>169</sup> Interview with refugee woman, Nakivale, 25 November 2009.

<sup>170</sup> Interview with refugee man, Nakivale, 27 November 2009.

<sup>171</sup> Interview with young refugee man, Nakivale, 21 November 2009.

<sup>172</sup> Interview with refugee man, Nakivale, 28 November 2009.

<sup>173</sup> Interview with refugee man, Nakivale, 17 November 2009.

<sup>174</sup> Interview with refugee man, Nakivale, 19 November 2009.

<sup>175</sup> Interview with young refugee woman, Nakivale, 19 November 2009.

<sup>176</sup> Interview with young refugee woman, Nakivale, 19 November 2009.

<sup>177</sup> Interview with UNHCR representative, Kigali, 19 November 2009.

Collective guilt is exacerbated by an additional assumption of guilt which is attached to those who remain outside of the country. According to one interviewee, anyone who has been out of the country for more than 10 years is automatically arrested when they go home.<sup>178</sup> As another said, "I have friends who went back to Rwanda but they have come back to the settlement saying that... on going back one is forced to accept that he or she committed a crime and if you insist that is not right they ask you why you fled."<sup>179</sup> One young man who joined the repatriation on 31 July 2009 from Uganda told of how they were taken by bus to Kigali and handed over to government workers. "When we arrived [at the reception centre] one of the government men said 'everyone over 20 years of age has some crime'. Some of them were taken and never returned."<sup>180</sup> A man who was 16 at the time of the genocide said: "They all consider us to be genocide Hutus... When the commandant was giving me papers to go to Mbarara, he commented that I was one of those *génocidaires*."<sup>181</sup>

Refugees expressed fear of arrest or disappearance. One man talked of how those who have recently returned have told him that Rwanda is not safe: "they said that people are taken to *gacaca* and on clearing they are again collected from their homes and disappear."<sup>182</sup> Individually their names might be cleared, but the ongoing ramifications of being associated with the genocide continue to haunt people. Those who were guilty and have been punished continue to live with the threat of future punishment for the same crime, while those who are innocent but are associated with the genocide however tenuously continue to live under suspicion.

It is also critical to note that it is not only Hutus who have suffered discrimination. As one observer recently noted, "The only thing that I can say about Rwanda is that everybody feels victimised by the state, whether ex-prisoners, ex-combatants or Tutsi survivors of genocide."<sup>183</sup> Similarly, a Tutsi woman told how she was accused of having been a *génocidaire* because she had survived: "Every night they came to bang on my door. The survivors of the genocide came and said, 'why were you not killed? Wasn't it you who killed your family?'"<sup>184</sup> Other informants talked of the fact that they had fled because they were half Tutsi and half Hutu, and were not accepted by either side of their families as a result. The polarisation of identities is therefore affecting all Rwandans regardless of background, showing it to be symptomatic of wider problems of discrimination.

## *Re-accessing Property*

A key issue that was preventing refugees from returning, and one that was inextricably linked to processes of justice outlined above, was problems relating to the re-accessing of land and other related property. Property restitution is particularly pertinent in Rwanda, which has one of the highest population densities in Africa.<sup>185</sup> Many rural Rwandans, in some locations over 50 percent, have been landless before, during and after the genocide.<sup>186</sup> Overpopulation, alongside other political calculations, had led prior regimes, in particular that of Habyarimana, to actively resist the return of Tutsis. This changed with the 1990 invasion, which led to the return of Tutsi refugees to Rwanda and multiple claims on many pieces of land.<sup>187</sup> The Arusha Peace Accords of 1993 recommended that refugees who had been out of the country for more than 10 years and whose land had been occupied by others, should not reclaim their

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<sup>178</sup> Interview with refugee woman, Nakivale, 20 November 2009.

<sup>179</sup> Interview with refugee man, Nakivale, 24 November 2009.

<sup>180</sup> Interview with refugee man, Nakivale, 24 November 2009.

<sup>181</sup> Interview with refugee man, Nakivale, 28 November 2009.

<sup>182</sup> Interview with refugee man, Nakivale, 24 November 2009.

<sup>183</sup> Email correspondence with a researcher recently in Rwanda, 11 March 2010.

<sup>184</sup> Interview with refugee woman, Nakivale, 26 November 2009.

<sup>185</sup> A similar situation has taken place in Burundi recently with the return of up to half a million displaced persons in the aftermath of the country's civil war. See IRRI, Rema and SSRC, 2009. "Two People Can't Share the Same Pair of Shoes: Citizenship, Land and the Return of Refugees to Burundi." Citizenship and Displacement in the Great Lakes Region, Working Paper no. 2, November.

<sup>186</sup> Obote Odora, *Understanding and Fighting Genocide Ideology*, The 13th Commemoration of Rwanda Genocide at African Union Headquarters, Guest Lecture at the African Union Headquarters, Addis Ababa-Ethiopia 7th April 2007, pg. 11

<sup>187</sup> C. Huggins, 2007, "Land in Return, Reintegration and Recovery Processes: Some Lessons from the Great Lakes region of Africa." (*Paper prepared for HPG-ODI Conference, Uncharted territory: Land, conflict and humanitarian action.*) p. 4.

property. Instead, they were to live in specially constructed, planned settlements, *imidugudu*.<sup>188</sup> However, in the context of the depopulation caused by the genocide and subsequent mass outflow of Hutu, this legal framework was more or less abandoned. “[O]ld caseload’ refugees were able to exercise claims on land for which they did not have a case. Many claims were successfully made on land because the previous occupants were either outside the country or had been killed in the [genocide] violence.”<sup>189</sup>

The rights of refugees’ and internally displaced persons (IDPs’) to property restitution, including land and housing, have been protected and elaborated in international laws. For instance, according to the Pinheiro Principles, which are in many respects a culmination of the emerging consensus on the right to property restitution, “all refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived....”<sup>190</sup> The Great Lakes Pact’s Protocol on the Property Rights of Returning Persons (Property Protocol), a binding legal instrument ratified by Rwanda,<sup>191</sup> enshrines many of the Pinheiro Principles and creates a unique regional framework for addressing conflicts over property and land in situations where the original owner or community has been long absent. However, after more than 15 years of displacement, the process of restitution for these refugees is bound to be fraught with complications such as loss or lack of identifying documentation and secondary possession. The Property Protocol requires states to put in place national institutions and mechanisms to assess and enforce housing and property claims. These include ensuring access to institutions for the adjudication of property claims, creating a framework for ensuring restitution or compensation, and setting up accessible land registry systems to avoid future contestation.

Rwanda has already embarked on a comprehensive post-genocide recovery, reconstruction and development process that includes a land reform programme: in February 2004, Rwanda “officially adopted a national land policy and in September 2005 a national land law came into effect”.<sup>192</sup> However, the redistribution of land, which is fraught under the best of circumstances, was inevitably going to be an even more complex and dominant issue in this environment.<sup>193</sup> Thus, by 2007, “... above 80% of litigation cases submitted to conciliators committees and to classic tribunals in the rural area related to land”.<sup>194</sup> As the National Unity and Reconciliation Commission in Rwanda (NURC) noted, “this is evidence that the land issue presents a serious and acute concern and ignites conflicts within the community.”<sup>195</sup>

For many refugees contemplating return, the land reforms made under the Organic Law Determining the Use and Management of Land remain anathema.<sup>196</sup> A key gap in the law is the lack of provision for the protection of land previously owned by refugees, who by virtue of their status are unable to contest any claims to or develop the land as required by the law for the maintenance of their interests. Further, with inadequate monitoring of the return and land

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<sup>188</sup> Ibid.

<sup>189</sup> Jason Mosley, *Land Policy in Rwanda: Issues for UK Policy*, Working Paper No. 3 All Party Parliamentary Group on the Great Lakes Region and Genocide Prevention, November 2004.

<sup>190</sup> United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, (Pinheiro Principles), Principle 2.1. The Pinheiro Principles are the first consolidated global standard on the housing, land and property rights of the displaced.

<sup>191</sup> Rwanda ratified the Pact on 11 November 2007. “Period Report of the Government of Rwanda to the African Commission on Human and Peoples’ Rights,” 47<sup>th</sup> Ordinary Session, 12-26 May 2010.

<sup>192</sup> Kathrin Wyss, *A Thousand Hills for 9 Million People. Land Reform in Rwanda: Restoration of Feudal Order or Genuine Transformation? A Swiss Peace Working Paper*, FAST Country Risk Profile Rwanda, 2006. See also Organic Law no. 08/2005 determining the use and management of land in Rwanda (O.G. No. 18 of 15/09/2005)

<sup>193</sup> There are a number of parallels with the situation in Burundi, where those returning who fled in 1972 have either been unable to reclaim their land or are expected to share it with the current land occupier. See IRRI, Rema and SSRIC, 2009. “Two People Can’t Share the Same Pair of Shoes: Citizenship, Land and the Return of Refugees to Burundi.” Citizenship and Displacement in the Great Lakes, Working Paper no. 2, November.

<sup>194</sup> Aggée M. Shyaka Mugabe, *Community Conflicts in Rwanda: Major Causes and Ways to Solutions*. A Report of the National Unity and Reconciliation Commission in Rwanda (NURC), Republic of Rwanda, December 2007.

<sup>195</sup> Ibid.

<sup>196</sup> While in many respects the law is progressive, articles 73-82 relating to land requisitioning and forceful confiscation of degraded or unexploited land may adversely affect refugees. Although these articles refer more specifically to confiscation or requisition of state private land, the definition of state private land includes “...vacant land and the remaining land that has no person with rights over them ...” (article 15))

claim determination process, there is limited information on what has actually taken place.<sup>197</sup> There has been criticism that international agencies have overlooked much of the complexity of resettlement and the specific needs of returnees, partly due to the government of Rwanda's ability to "neutralise" events to their advantage.<sup>198</sup> As a result, the government has been able to control the flow of aid and information regarding the needs of returning refugees and the process of land re-distribution.

It is hardly surprising, therefore, that the findings show that disputes over land continue to be dominant and are acting as a major disincentive for return. The fact that the justice system was seen to be stacked against them – particularly at a local level where many of the disputes are handled – only reinforced this fear. Indeed, many interviewees told how they had tried to reclaim their land and failed. This was often linked to the allegation that Rwandan army officials are currently on their land, and they had been intimidated until they had fled.<sup>199</sup> The following story was similar to many others:

There was an RPF colonel who came from Uganda and took our land and put his cattle on it. He refused to even share with us. The leader [of the area] came and demarcated land for my father, and the colonel did not say anything. This was in July 1997... Then one morning in December I went to our garden and there I saw the dead bodies of 11 people and gumboot marks like those of soldiers around the garden. They were my family, all my siblings... I suspected that the colonel had caused their death... After I had buried them, in January 2008 someone came and told me I was needed at the village office. On reaching there I was told that the next day I had to report to the police office... On considering that nobody reports to the police and comes back again, I decided to go back into exile... So now when I remember the death of my family and the fence around our land protected by soldiers, I fail to make a decision to go back.<sup>200</sup>

A woman fled because her life was in danger: "realising that I was the only survivor of my family they also wanted to finish me off so that there is no one to claim the properties. We were 24 siblings and now I am the only one left – all the others have been killed." Later in the interview she said that she would rather go and drown in Lake Nakivale than return to Rwanda.<sup>201</sup> Likewise a man showed the interviewer the scars from where he had been beaten:

In 2001 a repatriated Tutsi came to grab the land of my father. When I went to court to fight it, they imprisoned me... He was a soldier at first but had then become a *conseiller du secteur*... I was accused of genocide because I continued asking for justice concerning my land.<sup>202</sup>

A girl who had lost all her family during the genocide told a similar story: "they started saying I was a *génocidaire* as soon as I asked them to give me the inheritance of my parents... To stay in Rwanda would mean death for me."<sup>203</sup> There was a strong realisation that property claims were going to be unsuccessful – and potentially lethal: "if I go back I will be killed immediately because all my close relatives have been killed and I am the only one who can cause them an inconvenience..."<sup>204</sup> "When I tried to complain that my cows had been stolen, the soldiers said that the cows were taken to contribute to rebuild what Habyarimana had destroyed."<sup>205</sup> Land, justice and identity are all inextricably fused together: combined, they are acting as a massive disincentive for people to return.

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<sup>197</sup> Huggins, 2007, p. 5.

<sup>198</sup> *Ibid*, p. 8.

<sup>199</sup> Interview with refugee man, Nakivale, 19 November 2009.

<sup>200</sup> Interview with refugee man, Nakivale, 17 November 2009.

<sup>201</sup> Interview with refugee woman, Nakivale, 19 November 2009.

<sup>202</sup> Interview with refugee man, Nakivale, 25 November 2009.

<sup>203</sup> Interview with young refugee woman, Nakivale, 29 November 2009.

<sup>204</sup> Interview with refugee man, Nakivale, 17 November 2009.

<sup>205</sup> Interview with refugee man, Nakivale, 19 November 2009.

## ONGOING POLITICAL REPRESSION

All of these issues – perception that the *gacaca* process is unjust, stigmatisation of Hutus and collective attribution of guilt, and the inability to reclaim land – are symptoms of a deeper problem relating to a political and legal system that is perceived by those interviewed to be repressive and illegitimate. As the interviews revealed, while on the surface many of the issues relate to perceived discrimination and stigmatisation of Hutus, the real issue is the fact that there is little room for political opposition – as evidenced, for instance, in the fact that there were also Tutsis who talked of persecution when they challenged the government. Thus maintaining an overtly ethnic discourse under the guise of dealing with the perpetrators of genocide, while preventing discussion of ethnic difference appears to be a front for what is little more than the manipulation of identities by those in power. The findings point to the fact that the history of the genocide appears to have become a smokescreen for the government to carry out repressive measures against any opposition, with ethnicity being used – directly or implicitly – as a functional and tangible means of creating polarisation within communities and as an instrument of control.

“There is injustice in Rwanda but foreigners can’t see it.”

*Refugee woman, Nakivale,  
25 November 2009*

The picture created through the interviews is of a government that controls almost every aspect of its citizens’ lives. One man described being forced to grow red peppers and flowers despite the fact that they are not profitable.<sup>206</sup> Another talked of how you are told what to grow and are imprisoned if you refuse.<sup>207</sup> Heavy-handed state structures, functioning from the grassroots upwards, appear to be involved in many aspects of peoples’ lives. “In Rwanda, for example, per week there is one *gacaca* meeting, one meeting of the RPF, and one meeting to ask for money for the cooperative. They ask for 10,000 Francs for this cooperative (about US \$20), called *Omulenge Sacco* [credit cooperative of the *secteur*]. You cannot go and sell your produce on the market without a paper of the cooperative.” He later talked of how they make less money as a result of the co-operative: they see no value in it yet have no choice but to be part of it.<sup>208</sup>

Furthermore, there is clearly widespread pressure to join the RPF – which is, in effect, the only active political party in the country. There are officially 10 political parties in Rwanda, but they all function under the RPF because all parties have to be part of the Forum. “The MDR, the party that forms the biggest opposition, does not really exist anymore even though they helped RPF to get into power.”<sup>209</sup> During RPF meetings, which take place every week, new members are introduced and handed identity cards while swearing allegiance to the party. They also decide who will be part of the night patrols, in which everyone is supposed to participate. Another man talked of how nowadays in Rwanda it is impossible to be a doctor or policeman without being a member of the RPF.<sup>210</sup> Indeed, not having membership was referred to as being dangerous: “The RPA killed my wife [in 2000]. She was a primary school teacher, so she was one of the intellectuals. She didn’t join the RPF. More than 100 people were killed at that time... to be Rwandan is to be part of the RPF.”<sup>211</sup>

### *“Genocide Ideology”: The New Crime*

Within this context, the interviewees described living under constant threat of being falsely accused of crimes associated with the genocide. Despite the fact that many were children at the time, the government continues to use the genocide as a means for silencing those who oppose it. As mentioned above, at times this has been done through transferring guilt onto other family members, particularly the children of those accused of participating in the

<sup>206</sup> Interview with refugee man, Nakivale, 29 November 2009.

<sup>207</sup> Interview with refugee woman, Nakivale, 28 November 2009.

<sup>208</sup> Interview with refugee woman, Nakivale, 26 November 2009.

<sup>209</sup> Interview with refugee man, Nakivale, 28 November 2009.

<sup>210</sup> Interview with refugee man, Nakivale, 28 November 2009.

<sup>211</sup> Interview with refugee man, Nakivale, 19 November 2009.

genocide. In addition, there was frequent reference to the way in which the government has promoted “genocide ideology” as a new crime with which people can be charged if they are showing signs of opposition. Article 2 of the law defines genocide ideology as “an aggregate of thoughts characterised by conduct, speeches, documents and other acts aiming at exterminating or inciting others to exterminate people basing on ethnic group, origin, nationality, region, color, physical appearance, sex, language, religion or political opinion, committed in normal periods or during war”. The law further identifies characteristics of the crime in article 3 as:

any behaviour manifested by facts aimed at dehumanising a person or a group of persons with the same characteristics in the following manner: [including] marginalising, laughing at one’s misfortune, defaming, mocking, boasting, despising, degrading, creating confusion aiming at negating the genocide which occurred, stirring up ill feelings, taking revenge, altering testimony or evidence for the genocide which occurred.

As will be obvious from the extracts from set out above, the offence is extraordinarily broadly conceived and easily subject to manipulation. There is no legal consensus regarding the meaning of the phrase.<sup>212</sup> Article 19 is of the view that, “the definition of “genocide ideology” violates international law under the Genocide Convention 1948 and the International Covenant on Civil and Political Rights 1966 in multiple ways”.<sup>213</sup> “[Di]sagreeing with the government or making unpopular statements can easily be portrayed as genocide ideology, punishable by sentences of 10 to 25 years. That leaves little political space for dissent.”<sup>214</sup>

One interviewee explained it in this way, “There are certain ways people are accused. There is *igipinga* [a word used in Uganda and Rwanda to mean someone opposed to the government in power], someone hiding genocide ideology, or *interahamwe*. If you are called one of these things then you are judged for having killed someone.”<sup>215</sup> When asked who uses those words, he replied:

RPF members, Ibuka members, a group of DMI [Military Intelligence], the cadre of RPF. DMI takes people at night and imprisons them... Then there is also the *intore* group (the dancers) who work on information technology – the telephone and internet... they are part of the RPF government. They go round and frighten people who have not yet become part of the RPF ready for the elections... they make all Rwandans be members of the RPF. No opposition is left.<sup>216</sup>

Indeed, several interviewees said that they do not dare talk on their cell phones to people in Rwanda – they only send them text messages.

As one man explained, “‘genocide ideology’ is the crime when someone is doing well but isn’t behind the government... What I see is bad politics, because there are refugees in other countries. There is discrimination going on to exterminate the Hutu race. When you are accused of genocide ideology, they will imprison you for a minimum of 25 years. That is the current politics of Rwanda.” When asked who talks about genocide ideology, he replied, “Tutsis say that it is the Hutus. They say it if you are someone who progresses but doesn’t go into their politics.”<sup>217</sup> Another man talked of how he was being hunted by military intelligence, accused of having “genocide ideology”: “I came to Uganda because there was a group of young men who could collect people and kill them. The group is known as DMI and they started looking for me. These people dress in civilian clothes and can arrest people and disappear with them. They were after me because I was a Hutu... they said I have ‘genocide ideology’.”<sup>218</sup> Thus the crime of “genocide ideology” – broad and generalised in its reach – appears to be used in multiple ways to silence

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<sup>212</sup> See Obote Odora, p.12.

<sup>213</sup> See Article 19, Press Release, 1 October 2009 available at <http://www.africafiles.org/article.asp?ID=21948>.

<sup>214</sup> Kenneth Roth, 2009. “The Power of Horror in Rwanda.” Human Rights Watch, 11 April.

<sup>215</sup> Interview with refugee man, Nakivale, 26 November 2009.

<sup>216</sup> Interview with refugee man, Nakivale, 26 November 2009.

<sup>217</sup> Interview with refugee man, Nakivale, 19 November 2009.

<sup>218</sup> Interview with refugee man, Nakivale, 27 November 2009.

opposition. As Article 19 has asserted, “its current application suggests that it presents a catalyst for, rather than a barrier against, future human rights atrocities in Rwanda”.<sup>219</sup>

### *If You're Not in the RPF, You Must Be a Rebel*

The ongoing fighting in eastern DRC, created in part by the presence of the *Forces Démocratiques de Liberation du Rwanda* (FDLR),<sup>220</sup> a group comprised primarily of Rwandan Hutus, including a number of former *interahamwe* or *génocidaires*, has fuelled government suspicion and engagement in the war in Congo. In a number of interviews, accusations of being in the FDLR were referred to as another tool for imprisoning people – especially those who are too young to have participated in the genocide. Others expressed fear of conscription into Rwanda’s international war efforts.

One man refused to become a member of the RPF and was accused of being in the FDLR and imprisoned. Even though he managed to escape, his wife had been imprisoned in order to force him to go back:

When people ask you to be a member of the RPF and you refuse, within a few days you are put in prison or killed. If they can't find anything to accuse you of, they do something to make you be convicted. Like they oblige a boy to have sexual intercourse with a girl and then they make the girl say that you raped her. After that they give you 20 years in prison.<sup>221</sup>

Despite the fact that Rwanda has never employed a policy of forced military conscription, another young man talked of how, after three weeks of being back, the authorities came and told him that all young people between 20 and 30 years old have to go for training “because they said there is a possibility that there will be war with DR Congo. They took about 300 of us repatriates.” They were taken to a camp and were trained alongside “the Banyamulenge from Congo.” However, the young man deserted and was put in prison for two months. “We were beaten because they said we were interahamwe.” When he was brought back to his prefecture, he managed to escape and came back to Uganda. As he said, “those people from the UNHCR and government of Uganda oblige the Rwandan population to return because they say there is peace, but when they arrive there they find hell.”<sup>222</sup>

Another man told of how his wife and two sons were beaten to death in front of him because he refused to become a member of the RPF and hand over his two sons to go and fight in DRC. He fled to Burundi where he was followed and harassed by government agents, so fled to Uganda.<sup>223</sup> Not surprisingly, for many the war in eastern Congo is not one they want to be a part of – not because they support the FDLR, but because they do not support Rwanda’s involvement and are suspicious of its motivation. “Now they are making our young people go to Congo to kill the FDLR. But in reality they are there to look for minerals.”<sup>224</sup> Indeed, recent reports have shown strong linkages between Rwanda’s presence in eastern DRC and the plundering of the country’s natural resources, including through the *Congrès National pour la Défense du Peuple* (CNDP)<sup>225</sup> – formerly a rebel group but now somewhat integrated into the DRC army and deployed in some of the region’s most lucrative mining areas.<sup>226</sup>

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<sup>219</sup> See page 3 Article19, Comment on the Law Relating to the Punishment of the Crime of Genocide Ideology available at <http://www.article19.org/pdfs/analysis/rwanda-comment-on-the-law-relating-to-the-punishment-of-the-crime-of-genocid.pdf>.

<sup>220</sup> The FDLR formed in the aftermath of the Rwandan Patriotic Front’s takeover in Rwanda following the 1994 genocide. It is a rebel group comprised primarily of Rwandan Hutus who are allegedly fighting against the current “Tutsi” government in Rwanda. They are also seen as a primary source of ongoing insecurity in eastern DRC.

<sup>221</sup> Interview with refugee man, Nakivale, 28 November 2009.

<sup>222</sup> Interview with young refugee man, Nakivale, 24 November 2009.

<sup>223</sup> Interview with refugee man, Nakivale, 29 November 2009.

<sup>224</sup> Interview with refugee man, Nakivale, 29 November 2009.

<sup>225</sup> The CNDP was a militia group operating in eastern DRC, initially led by Laurent Nkunda until his arrest in January 2009, and widely portrayed as being predominantly Tutsi and backed by Rwanda.

<sup>226</sup> United Nations, 2009. “Final Report of the Group of Experts on the Democratic Republic of Congo.” 7 December. See also BBC news – “UN-backed forces ‘failing’ in DR Congo rebel fight.” 25 November 2009. <http://newsvote.bbc.co.uk/mpappas/pagetools/print/news.bbc.co.uk/2/hi/africa/8377842.stm>

The ongoing presence of the FDLR and the atrocities associated with it has helped to keep alive the association between *génocidaires* and Hutus more generally. Conversely, stigmatisation of Hutus and the lack of just systems for dealing with those who have committed atrocities continue to ensure that the FDLR has no exit strategy. However, the Rwandan government's approach to dealing with the FDLR is to promote the perception that the majority of the FDLR are suspected *génocidaires*, which has done little to promote the possibility of negotiation with this group.<sup>227</sup>

## *One-sided Justice*

The purposes of the government of Rwanda are served by the exclusive pursuit of a particular version of justice for the *genocide* that ignores the events that followed. Specifically, the RPF has never been meaningfully held accountable for any of its actions both before coming to power and since: the enormity of the genocide, so graphic in its impact, has concealed RPF crimes. There were repeated stories of RPF atrocities committed after the genocide. One man recited the names of all those he knew who had been killed by the RPF on 29 April 1994 when they fled into Tanzania and had to go across a bridge over the river Orsumo, as well as the names of those who were killed when they were forced out of Tanzania and back to Rwanda.<sup>228</sup> Another talked of a massacre of Hutus that took place in 1997: "On 24 December 1997, an unforgettable date, a lieutenant came and the *bourgemestre* of [X]<sup>229</sup> called all the people together for a meeting. Everyone was killed, but I was warned beforehand so managed to escape.... [The current government] has massacred a lot of people and I have seen it. I can testify against them. I keep their names in this booklet. The members of my family who have been killed, I keep it in my head."<sup>230</sup>

Another talked of what happened in the camps in DRC: "we heard the stories of what the RPF did. One thing I heard was that they would make people 'wear a jacket'. They would make cuts in people's sides and put their arms inside. They would even get pregnant women and cut their unborn baby out of their womb."<sup>231</sup> Furthermore, as described above, some of those refugees who have tried to pursue justice for family members killed subsequent to the genocide recount having met with failure and intimidation.

## *Repressive Politics*

Most significantly, the interviews point to the fact that political repression in Rwanda is a current phenomenon. There were significant numbers of stories of ongoing oppression, extra-judicial killings and disappearances – all of which were traced, either directly or indirectly, to government actors and present a sobering picture of a sophisticated but profoundly repressive political system that is systematically silencing any opposition.

One man talked of how he had had to flee because he questioned why only Hutus were being tried in the *gacaca* courts. He was then visited by DMI and fled before they could come back:

The RPF has changed our rights almost to animals. There are groups instituted by government to harass citizens. There are the local defence who are not paid by government but are armed just like soldiers. These ones do not give security to the citizens. Then there is another one that really tortures the Rwandan people called DMI. This institution organ is what causes divisionism among the tribes. They operate in numberless cars and any person who seems to be opposed to the government is arrested and taken by this car. They

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See also Global Witness, 2010. "DR Congo: ex-rebels take over mineral trade extortion racket." 11 March. [http://www.globalwitness.org/media\\_library\\_detail.php/937/en/dr\\_congo\\_ex\\_rebels\\_take\\_over\\_mineral\\_trade\\_extortion\\_racket](http://www.globalwitness.org/media_library_detail.php/937/en/dr_congo_ex_rebels_take_over_mineral_trade_extortion_racket) (Accessed 11 March 2010.)

<sup>227</sup> See International Crisis Group, 2009. "Congo: A Comprehensive Strategy to Disarm the FDLR." Africa Report no. 151, July.

<sup>228</sup> Interview with refugee man, Nakivale, 18 November 2009.

<sup>229</sup> Location withheld.

<sup>230</sup> Interview with refugee man, Nakivale, 17 November 2009.

<sup>231</sup> Interview with refugee man, Nakivale, 17 November 2009.

have so many ways of collecting people at night and disappearing with them... They are signs of threat. When people see them during the day they just take off. So now they are operating under cover of darkness. Because of this, for the last 15 years people have continued to leave the country seeking asylum.<sup>232</sup>

Another man had been responsible for security in his “cellule”,<sup>233</sup> but started asking questions about nocturnal disappearances: “They started to harass me so I fled... but since the day I left, they have imprisoned my oldest son... They try to show it is safe to the international community, but inside the country Kagame wants to revenge on the Hutus. If you are a businessman or intellectual, you are considered to be a *génocidaire*.”<sup>234</sup> A former driver for the Rwandan military up until 2001 talked of how he had witnessed horrific atrocities against prisoners at the hands of the military. When he questioned his superiors about what was going on, he was imprisoned.<sup>235</sup> His story was similar to an incident described by another man, of prisoners being burnt alive inside containers in 2000.<sup>236</sup>

The stories that are told are not only of events that happened in the immediate aftermath of the genocide, but also recent events. In fact about one quarter of those interviewed had fled for the first time from Rwanda since 2001. A woman who fled in 2007 described what had happened to her:

My problems started when I had gone to take my husband food in jail. The Tutsis there beat me and kept on threatening me that I would face fire. They accused my father and mother of participating in genocide – yet they were killed in 1994. My husband was released in 2007, but then they kept on harassing us... They started coming to the village to write down names of all those who were big in 1994 and then they started collecting people on trucks – ‘*panda gar*’ – and taking them to Panga prison. If you go and check on them in prison, then you are arrested.<sup>237</sup>

A man who had lost his entire family in the genocide described being harassed by the soldier who had been responsible for killing his family – a soldier who had taken over his land. The interviewee had tried to fight for justice for his family. Two men without uniforms came to his house and raped his wife. “They said that because I was a Hutu I didn’t merit such a good job. They also said that in a few days I would be killed. They burned down our house. That is when I decided to come to Uganda.”<sup>238</sup>

### *Turning a Blind Eye – Again*

Despite such stories and ample documentation of both the oppressive policies of the Rwandan government inside Rwanda and the destructive role of its policies in DRC, the international community continues to throw its weight behind President Kagame. There was widespread anger amongst interviewees that it is effectively condoning the *status quo*. In particular, international support for the ongoing repatriation exercise – as evidenced by UNHCR’s involvement – is considered a clear indicator of the lack of acknowledgment of the dire human rights situation in Rwanda. One man talked of how “[t]he international community and UNHCR don’t see what goes on outside Kigali. Kagame only uses some Hutus who are inside to show that the country is safe and that we have to return.” He then went on to talk about how one man who had been used to show the refugees how well his repatriation went, has now fled to Uganda again.<sup>239</sup> As another refugee said, “[w]hen you go to Rwanda you see good things. But in the villages, behind the house, I don’t want to say what is happening there.”<sup>240</sup>

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<sup>232</sup> Interview with refugee man, Nakivale, 26 November 2009.

<sup>233</sup> A cellule is the smallest unit of government in Rwanda.

<sup>234</sup> Interview with refugee man, Nakivale, 19 November 2009.

<sup>235</sup> Interview with refugee man, Nakivale, 29 November 2009.

<sup>236</sup> Interview with refugee man, Nakivale, 28 November 2009.

<sup>237</sup> Interview with refugee woman, Nakivale, 26 November 2009.

<sup>238</sup> Interview with refugee man, Nakivale, 18 November 2009.

<sup>239</sup> Interview with refugee man, Nakivale, 19 November 2009.

<sup>240</sup> Interview with refugee man, Nakivale, 28 November 2009.

The gap between official national rhetoric and local realities was frequently referred to. As one woman said:

At the higher circles of government there is continuous education of the people that the people must unite and be one people and the issue of tribes should not be encouraged. But at the local level it is something else. People can disappear and the central government is not informed. So at the community level the politics of discrimination is still going on.<sup>241</sup>

She later added, “the president is the one who can stop this system of hunting people because of their tribes. If you are a parent and your children defecate in the open, then that is what they will follow.”<sup>242</sup> While Kigali might display all the trappings of functioning governance, life in the villages tells a different story.

### *Ethnic Polarisation*

The genocide and the swirl of guilt, heart-searching and recriminations that have surrounded it have provided a ready context for the marginalisation and stigmatisation of Hutus – which, in turn, forms part of a wider culture of political repression: “The Tutsis say that the Hutus committed genocide, so they should be killed just like the Tutsis. It is a kind of killing in hiding so that it won’t be discovered by foreign countries.”<sup>243</sup> Once again, Hutu identity and its association with the genocide is being used as a tool of ongoing political repression. Despite the rhetoric of moving beyond ethnicity, it is clear that identities continue to be manipulated: “tribal issues are even much stronger than before, and the government is encouraging it.”<sup>244</sup> Many even referred to this as a new form of genocide: “genocide like the one that happened before cannot happen again, but [the government of Rwanda] are killing people quietly as of now.”<sup>245</sup> Likewise a woman said, “the way I see it, genocide like the one we had may not happen again, but there is another happening. It is the one of imprisoning people and then they disappear, and of employing people and not paying them, which is slavery. Like with *gacaca* they convict you for 30 years, which means you have no life left – and they only target Hutus.”<sup>246</sup>

One man told of how he had been passed a copy of a letter written by a woman whose husband was killed in July 2009 by “unknown people”: “The husband was a colonel in the RPA. It is said that a meeting was held by the President of Rwanda and others including Tito Rutaremara with the objective of killing educated Hutus and those that are rich. However this colonel refused to implement the objective and was killed. This document was written by a Tutsi and the lady who wrote it is now in Malawi. The killed colonel is Ndahiro Dan.”<sup>247</sup> Although it is not possible to verify these claims, the fact that such allegations are circulating is an indication of the level of apprehension, or at least of the manipulation of such apprehensions.

### *Security in Exile*

There was clear recognition among those refugees interviewed of the regional dimension to their dilemma. There was frequent reference to the strong relationship between Kigali and Kampala, particularly on account of the pan-ethnic Tutsi identity which both are seen to represent: “for us, the Bahutu, whether it is Uganda or Rwanda, it is always very difficult. The governments of Uganda and Rwanda are Tutsis. Being a citizen of Uganda or Rwanda, it is the same thing. The government of Rwanda is a child of the government of Uganda.”<sup>248</sup> This relationship was

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<sup>241</sup> Interview with refugee woman, Nakivale, 20 November 2009.

<sup>242</sup> Interview with refugee woman, Nakivale, 20 November 2009.

<sup>243</sup> Interview with refugee man, Nakivale, 29 November 2009.

<sup>244</sup> Interview with refugee man, Nakivale, 21 November 2009.

<sup>245</sup> Interview with refugee man (26 years old), Nakivale, 18 November 2009.

<sup>246</sup> Interview with refugee woman, Nakivale, 28 November 2009.

<sup>247</sup> Interview with refugee man, Nakivale, 17 November 2009.

<sup>248</sup> Interview with refugee man, Nakivale, 28 November 2009.

particularly evident in the number of RPF personnel who had been seen in Uganda: “Many RPF people spend a lot of time in Uganda. It is like Rwanda and Uganda are the same country. It is like life between brothers and sisters. There are even associations of Banyamulenge, Tutsis from Congo, who travel back and forth.”<sup>249</sup>

Not surprisingly, and despite the reality of a fluctuating political relationship between Kampala and Kigali over the last decade, as a result of these perceptions of close Uganda/Rwanda ties, many refugees do not feel safe in Uganda. There were a number of stories regarding the presence of Rwandan intelligence officers operating in Uganda and intimidating refugees. For instance, one man, who had escaped and fled after refusing to give a false statement against someone currently on trial at the ICTR, talked of how some men, who he recognised as part of DMI, had tried to bundle him into a car in the Kampala taxi park – but once again had managed to escape.<sup>250</sup> Another refugee spoke of how his home in Uganda had been attacked with a grenade.<sup>251</sup> The Uganda police investigated and a recently arrived Rwandan man was arrested and jailed for the offence, along with two others. Subsequently the same refugee was approached and told he had been “cleared” to go back to his home area in Rwanda. The approach was reported to the local police and the person disappeared but later was seen as part of a visiting Rwandan ministerial delegation to the camp.

The reality is therefore that despite a genuine intention to protect on the part of the Ugandan authorities, local or national, it may be impossible for them to guarantee the safety of all Rwandan refugees in Uganda, depending on the particular circumstances. This fact has been clearly recognised by UNHCR: resettlement of Rwandan refugees has been carried out on a number of occasions during the last few years.<sup>252</sup>

## CITIZENSHIP?

The crucial question, of course, is what are the implications of the findings for this group of refugees? If repatriation is defined as the genuine realisation of citizenship, including access to all the rights that are bound up with it, then the findings challenge the notion and assumption that the reinstatement of the bond of citizenship is currently a possibility for all Rwandans – and certainly for this group of refugees. On the one hand, people had a clear idea of what citizenship *should* mean – interviewees talked of citizenship as freedom of movement and safety, and of living free from the threat of exile: “it means a person who is staying in his country without leaving.” Yet there was also a clear recognition that their refugee status was evidence of the failure of their Rwandan citizenship to deliver on its promise of protection. “I cannot say I am a Rwandan citizen because if I was, then I would not be a refugee. I would be under the protection of my country. So all I can say is that I am a refugee from Rwanda”;<sup>253</sup> “I have a card that says I’m a refugee so I do not have any citizenship”.<sup>254</sup>

“We are afraid of the government, not of our country. If the Hutus would have rights, we would return.”

*Refugee man, Nakivale,  
21 November 2009*

Return to Rwanda and an end to exile was seen as impossible under the current political configuration. Specifically, there was recognition that their Hutu ethnicity compromises access to the realisation of full citizenship rights in Rwanda, despite the fact that Hutus are a significant majority of the population. The implications of ethnic identity appear to have only become more poisonous in a context in which state reconstruction has outlawed any discussion

of ethnic distinctions as embodied in the laws criminalising incitement to *irondamoko* (“ethnicism” or discrimination) and *amacakubiri* (“divisionism”).<sup>255</sup> While this was done, in part, in the wake of a decades old system of identity cards

<sup>249</sup> Interview with refugee man, Nakivale, 17 November 2009.

<sup>250</sup> Interview with Rwandan refugee, November 2009.

<sup>251</sup> Interview, 17 November; 54 year old man

<sup>252</sup> Conversation with prominent international human rights NGO involved in assisting in the identification of urgent protection cases.

<sup>253</sup> Interview with refugee man, Nakivale, 17 November 2009.

<sup>254</sup> Interview with refugee man, Nakivale, 27 November 2009.

<sup>255</sup> See Law No. 47/2001 on 18/12/2001 on Prevention, Suppression and Punishment of the Crime of Discrimination and Sectarianism.

declarative of ethnic origin (which was one of the tools used to identify targets for killings by the *genocidaires*), the lack of honesty that accompanies it suggests that ethnic identities have continued potency. Thus, as a 26 year old refugee man replied when asked if he counts himself a citizen of Rwanda, “No, because for me being a citizen of Rwanda means rotting in the jails because I am a Hutu. Only if they can change their attitude and actions towards the Hutu, not taking us all as killers, then we can stay together.”<sup>256</sup> “Hutus don’t have rights – no rights to live, no rights of property, and no merits of being part of a country.”<sup>257</sup> In this interpretation, Hutus – or specifically Hutus who do not become members of the RPF – are no longer safe in Rwanda. “The citizens of Rwanda are only the Tutsis. The rest of us are treated like cows.”<sup>258</sup>

As Hutus and as those viewed as politically opposing the current Rwandan regime, these refugees see themselves as second class citizens in Rwanda. Consequently there was recognition that even if they should return to Rwanda, they would remain stigmatised – hardly the basis for nation-building that is so desperately needed in a country that was literally torn apart at the seams by violence. They want to return, but they have no faith in the will of the current government to protect them.

“Being a citizen of one’s country means living in peace in your country. There is nothing as bad as being a citizen of a country and being haunted by the feeling that you are a refugee.”

Refugee man, Nakivale,  
17 November 2009.

It was to deal with these very circumstances that the mechanisms of international protection, through recognition of the right to asylum and the institution of refugee status, were created by the international community. Refugee status fills the gap between an experience of citizenship which is unable to deliver on fundamental human rights protections and the eventual enjoyment of effective citizenship. The foundation of refugee law in fact constituted one of the first direct challenges to the exclusivity of the state-citizen link with respect to protection, inserting the refugee a new community and establishing a basic set of rights to which the persecuted exile was entitled. UNHCR was charged with assisting states to offer a protective umbrella, identifying persons in need and exercising diplomatic functions where necessary.

Thus refugee status and the institutions and principles of what has come to be known as the “international protection regime” are intended to constitute a kind of bridge citizenship: refugee status provides for temporary admission to a tangible “territory of human rights” embodied in the international refugee/*non-refoulement* protection regime and affirmed through the award of a Convention Travel Document/passport.<sup>259</sup> Refugee status ends when the individual has established a new *and effective* citizenship link<sup>260</sup> with a state (cessation of refugee status). As noted above cessation is constructed conceptually around the identification of the existence of an effective relationship with a new state of nationality (“enjoys the protection of his or her new nationality”<sup>261</sup>) through integration or resettlement or upon the re-establishment of an effective state-citizen relationship with the country of origin (“ceased circumstances” or “voluntary reavailment of nationality”) through repatriation.

For Rwandan refugees in Uganda, however, the official policy response to their plight appears to lack effective recognition of the genuine protection concerns that are preventing them from accessing meaningful citizenship. At the same time, the appropriate alternative in these circumstances – the granting and enjoyment of refugee status as an effective bridge to the three durable solutions – is *in practice and policy* being disingenuously denied. Cessation is

<sup>256</sup> Interview with refugee man (26 years old) Nakivale, 18 November 2009.

<sup>257</sup> Interview with refugee man, Nakivale, 18 November 2009.

<sup>258</sup> Interview with refugee man, Nakivale, 29 November 2009.

<sup>259</sup> The principle of non-refoulement is a cornerstone of refugee law. It bars states from returning anyone to a place where they would risk persecution “for reasons of race, religion, nationality, membership of a particular social group or political opinion.” (1951 UN Refugee Convention, art. 33).

<sup>260</sup> The UN Refugee Convention, for example, urges states to “as far as possible facilitate the assimilation and naturalisation of refugees” and to “make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings” (Article 34).

<sup>261</sup> Article 6 (1) (d) Uganda Refugees Act.

being informally rather than formally declared, and means for formal challenge denied by the failure to observe the law.

In short, the circumstances in which these refugees find themselves can be described as a situation of constructive cessation and denial of effective citizenship. Rwandan refugees in Uganda are being denied not just effective national protection, but also most of the rights concomitant with refugee status, the international protective “citizenship” which is intended to create a path to the ultimate re-establishment of a viable state-citizen link. As a result, unsurprisingly, many of the refugees see themselves as stateless, although certainly they are not so *de jure*. Many are planning to “disappear” into Uganda if the pressure on them to repatriate should increase further reinforcing their lack of recognised legal status. Asked what the future holds, one refugee replied: “if they make us leave the settlement I will just disappear.”<sup>262</sup> “Here I identify myself as Mufumbira because they speak the same language as I do. I do not like that issue of being Rwandan because it can endanger me... But deceiving in this way troubles me. My conscience cannot settle at all.”<sup>263</sup>

Most of those interviewed, therefore, feel utterly hopeless about their future. Unable to return to Rwanda, unable to access Ugandan citizenship and recognising that Rwandans are typically not considered eligible for resettlement, their only remaining strategy is to stay off the radar of official structures. This strategy, while resourceful, leaves them profoundly vulnerable and is certainly not a long-term solution. Their nationality, rather than protecting them, has become a terrible liability.

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<sup>262</sup> Interview with refugee man, Nakivale, 22 November 2009.

<sup>263</sup> Interview with refugee man, Nakivale, 27 November 2009.

## CONCLUSION

To a certain extent these findings tell one side of the story. We have not heard the stories of those who have managed to return to Rwanda, those who did not manage to escape, or the stories of the majority of people who survive – in or outside of Rwanda – by keeping their heads down and staying off the political radar. It is also vital that the findings not be translated into an equally harmful logic of Hutu victimisation and Tutsi oppression. This constant victim/perpetrator dichotomy and exchange of roles is not only inaccurate but serves to further perpetuate the dangerous cyclical polarisation of identities that has had such a devastating impact on the country.

What is clear, however, is that ongoing abuses of justice are continuing to feed ethnic divisions in Rwanda, which are compromising people's ability to live without fear and to reclaim or hold onto their land and other property. Far from burying the ethnic hatchet, the findings suggest that horrific things are happening under the government of Rwanda's watch in the name of ethnic difference. Rather than addressing this root cause of violence, current attitudes and approaches promoted by the government and epitomised in the collective assumption of guilt attributed to Hutus, are only exacerbating the situation.

This version of reality in Rwanda, seen through the eyes of a group of refugees who have suffered acutely as a result, points to serious concerns regarding the prospects for long-term stability and the realisation of rights for all those living in Rwanda or wanting to one day return to it. It shows the massive contradiction that lies at the heart of the current government's reconstruction efforts: the government has created a situation in which it has used the concept of difference to oppress those who are seen to oppose it, and yet denies that such difference exists. It has re-built a state that draws on its "genocide credit"<sup>264</sup> to ensure the hegemony and precarious control of a beleaguered minority. But it is credit that must surely run out. Reconstructing the state on this basis is not only dangerous, as testified by the stories told by these refugees, but is proving disastrous for the long-term stability and unity of the country.<sup>265</sup>

Ultimately, for Rwanda to move forward there needs to be a far more honest appraisal of what took place during and after the genocide and the RPF needs to take responsibility for atrocities committed by its own forces. Until this happens, the potential for ethnically-aligned violence to be reignited will remain, Rwanda may once again erupt into violence, and refugees will continue to fear return. Moreover, the knock-on effect of the genocide will continue to be felt throughout the region.

It also raises serious questions with regards to the viability of return for Rwandan refugees at this time. Yet many in the international community continue to refuse to recognise this version of reality, leaving refugees in a highly vulnerable situation. As their testimonies so clearly demonstrate, these assumptions must be re-evaluated and must take cognisance of the fact that the conditions that make return durable are about far more than the cessation of hostilities. Instead, wider issues relating to people's ability to genuinely assert the bond of citizenship and access their rights need to be accommodated into the discussion. Until the political context in Rwanda has become genuinely conducive to repatriation, Rwandans will continue to remain in exile despite the poor conditions in which many are currently living. In the mean time, therefore, alternatives must be sought urgently for Rwandan refugees whose very existence is, after all, symptomatic of their country's political failure.

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<sup>264</sup> Filip Reyntjens, 2004. "Rwanda, Ten Years On: From Genocide to Dictatorship." *African Affairs*, 103: 177 – 210 p. 199.

<sup>265</sup> As Lemarchand says, "[r]econciliation, assuming it can ever be achieved, requires that the past be confronted, not obliterated." René Lemarchand, 2009. *The Dynamics of Violence in Central Africa*. Philadelphia: University of Pennsylvania Press, p. 100.

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## **About the International Refugee Rights Initiative**

The International Refugee Rights Initiative (IRRI) works to enhance the protection of the rights of those who are forced to flee their homes worldwide. IRRI grounds its research and advocacy in the rights accorded to the displaced in international human rights instruments and strives to make these guarantee effective in the communities where the displaced and their hosts live. Based in New York and Kampala, IRRI acts as a bridge between local advocates and the international community, enabling local knowledge to infuse international developments and helping local advocates integrate the implications of global policy in their work at home. Currently IRRI has a regional focus on Africa, the continent that hosts more refugees per capita than any other.

## **About the Refugee Law Project**

The Refugee Law Project is a project of the Faculty of Law, Makerere University, Kampala, Uganda. It seeks to ensure fundamental human rights for all asylum seekers, refugees, and internally displaced persons within Uganda. It envisions a country that treats all people within its borders with the same standards of respect and social justice, and works to see that all people living in Uganda, as specified under national and international law, are treated with the fairness and consideration due fellow human beings.